

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2018

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.17071 of 2014
and M.P.No.1 of 2014

U.Vasantham Umapathi

...Petitioner/Accused

-Vs-

P.Kothandaraman

...Respondent/Complainant

Prayer:

Criminal Original petition filed under Section 482 of the Code of Criminal Procedure, to set-aside the order in Crl.M.P.No.8282 of 2013 in the C.C.No.182 of 2010 dated 28.05.2014 passed by the learned Judicial Magistrate, Arini and allow the original petition.

For Petitioner : Mr.S.Ramachandran

For Respondent : Notice served

ORDER

This petition has been filed challenging the order of dismissal passed by the Court below in a petition filed under Section 91 of Cr.P.C.

2. The petitioner is facing trial before the Court below for an offence under Section 138 of the Negotiable Instruments Act. During the course of trial, the petitioner filed a petition under Section 91 of Cr.P.c. to direct the respondent to produce the income tax returns and the bank pass book. The Court below had dismissed the petition on the ground that the petitioner had sought for income tax returns for the year 2009-2012 and also bank pass book for the year 2009-2012 and the petitioner had filed this petition at the stage of defendant side witness. The Court below has found that the respondent cannot be compelled to produce the income tax returns and bank pass book and the petitioner has to rebut the presumption based on the oral and documentary evidence which is

already placed on record.

3. It is seen that the petitioner has taken a specific stand that the cheque was not issued by her to the respondent and it has been misused. During the course of cross examination, the petitioner has put sufficient questions to the respondent in this regard. The petitioner has also questioned the respondent with regard to the income tax returns and the account maintained by the respondent in the bank. If the respondent chooses not to produce the income tax returns and the bank pass book, he cannot be compelled to produce the same. The Court below can always draw inference under Section 114(g) of the Indian Evidence Act. This Court is not able to see any illegality or infirmity in the order passed by the Court below.

4. In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings, within a period of two months from the date of receipt of copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

LPP/vsa

To

1. The Judicial Magistrate,
Arini.

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VBA (CO)
CS/03/01/2019