IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.17256 of 2014
and MP.Nos.1 & 2 of 2014
and MP.No.1 of 2015

D.S.Ra.P.Pratap Singh
S/o.S.B.Dorai Singh,
F/40, 20, D'Monte Street,
Santhome,
Chennai - 600 004.

...Petitioner

Vs.

Ashok Giri
S/o.Major Annasami Giri,
No.13, 32nd Cross Street,
Besant Nagar,
Chennai - 600 090.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order in Crl.MP.No.2574 of 2013 in C.C.No.3619 of 2012 on the file of the Fast Track Court at Magisterial Level-II, Egmore, Chennai.

For Petitioner : Mr.S.Swamidoss Manoharan
For Mr.R.Vivekananthan

For Respondent : Mr.S.Ananthanarayanan



O R D E R

This petition has been filed by the complainant to set aside the order passed by the Fast Track Court at Magisterial Level-II, Egmore, Chennai in Crl.MP.No.2574 of 2013 in C.C.No.3619 of 2012, dated 09.06.2014.

2. The petitioner herein has filed a complaint against the respondent herein under Section 138 of the Negotiable Instruments Act and based on the same, the Fast Track Court at Magisterial Level-II Egmore, Chennai, has taken the case on file in C.C.No.3619 of 2012.

3. During trial, the respondent herein has filed an application under Section 91 of Cr.P.C., in Crl.MP.No.2574 of 2013 to direct the petitioner herein to produce certain documents. The learned Magistrate by the order dated 09.06.2014 has directed the petitioner herein to produce income tax return from the year 2007 to 2013, statement of accounts from 2007 to 2013 of Canara Bank, Santhome, Chennai, law degree certificate, enrollment certificate in Bar Council of Tamilnadu, the statement of accounts duly audited for the payments received by the petitioner herein from the accused, the particulars of the cases in which the petitioner herein entered appearance in any Court of law anywhere in India within one month from the date of the said order. Aggrieved by the same, the complainant has filed the present petition.

4. The learned counsel for the petitioner has submitted that the petitioner herein joined with the respondent/accused as legal Adviser on 05.02.2011 and from that date onwards, he is handling the case of the respondent/accused and only for the fees due to be paid to the petitioner, the respondent has issued a cheque for Rs.15,00,000/-(Rupees Fifteen Lakhs Only). Since the cheque was dishonoured, when it was presented before the Bank, after sending statutory notice, he has filed a complaint under Section 138 of the Negotiable Instruments Act. Since the petitioner has served with the respondent company only from 05.02.2011, there is no justification in directing the petitioner to produce income tax return and statement of accounts prior to the said date and therefore he requests to modify the order passed by the learned Magistrate.

5. Per contra, the learned counsel for the respondent has submitted that the petitioner herein has not served as legal adviser and on the contrary, he was working as Executive Director of the Company from 05.02.2011. He further submitted that in order to rebut the presumption which arises under Section 138 of the Negotiable Instruments Act, the aforesaid documents are absolutely necessary to show that before the petitioner was induced as Executive Director what was his income and what was his status and therefore, the learned Magistrate has allowed the petition which was filed by the respondent. He further submitted that unless those documents are produced, the respondent cannot cross examine the petitioner/complainant with reference to status and income of the petitioner herein. He further submitted that as per Section 146 of the Evidence Act, the witness can be cross examined to discover his position in life and hence those documents are absolutely necessary.

6. Admittedly, the respondent herein has filed Crl.MP.No.2574 of 2013 under Section 91 Cr.P.C. Section 91 Cr.P.C., reads thus:

''Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.”

7. From the reading of the abovesaid provision, it is clear that before directing a person to produce certain document, the Court or Officer in charge of a police station has to decide whether the production of the said document is necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding. In this case, the income tax return and Bank Statement for the period prior to the appointment of the petitioner are not at all relevant for deciding the case which is pending between the parties. Therefore, this Court is of the view that the order passed by the Magistrate has to be modified to that extend.

8. In the result, this petition is partly allowed. Consequently, connected miscellaneous petitions are closed. The order passed by the Magisterial level-II Fast Track Court Egmore, Chennai, in Crl.MP.No.2574 of 2013 is modified to the effect that the petitioner herein has to produce the income tax return from the date of appointment i.e., from 05.02.2011 and also the Bank account statement from 05.02.2011. In respect of other documents, the order passed by the trial Court is not changed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Magisterial Level-II,
Fast Track,
Egmore, Chennai.

+1cc to Mr.S.Ananthanarayanan, Advocate, S.R.No.76365

+1cc to Mr.R.Vivekanandan, Advocate, S.R.No.75384

Crl.O.P.No.17256 of 2014

SSI(CO)
GSP(31/01/2019)