IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM:
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P..No.18056 of 2017
and
Crl.M.P.No.11008 of 2017

S.Manikandan ... Petitioner

Vs.

A.Sankar ... Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to set aside the order dated 22.06.2017 C.M.P.No.2793 of 2017 in C.C.No.2 of 2015 in the Court of the Fast Track learned Judicial Magistrate No.2, Coimbatore.

For Petitioner : Mr.V.P.K.Gowtham

For Respondent : Mr.A.Thiyagarajan

ORDER

This petition has been filed challenging the order passed by the court below under Section 91 of Cr.P.C wherein the Court below had dismissed the petition as regards the production of audited balance sheet.

2. The petitioner is an accused, who is facing trial for an offence under Section 138 of Negotiable Instruments Act, filed by the respondent. During the course of trial, the petitioner had put certain questions to the respondent with regard to the accounts, which are maintained in various banks and also with regard to the income tax returns filed by the respondent. The respondent had also answered all those questions. The cross examination was completed on 10.11.2016. Thereafter, the petitioner filed a petition under Section 91 of Cr.P.C seeking for the following documents.

> “a) The copy of the attested audited balance sheet already submitted before the Income Tax Department during the finance year from 01.04.2009 to 31.03.2014 of the complainant.

b) The statement of accounts for the overdraft account maintained by the complainant in the Indian Bank, ATUC branch since availing the facility till date or closure of account.

c) The duly attested copy of the statement by the branch manager for the accounts maintained by the complainant in the five banks as stated during cross-examination for the period 01.01.2009 to 31.03.2014."

3. The Court below had considered the petition filed by the petitioner and has given a specific finding that the petitioner is trying to fish out more information by seeking documents and there is no bona fide on the part of the petitioner for filing the application. The Court below has also given a specific finding that the respondent has already produced the statement of accounts as sought for by the petitioner maintained in different banks. Court has dismissed the petition, only in so far as the audited balance sheet, is concerned.

4. The learned counsel for the petitioner would submit that the respondent was running an unregistered chit and the disputed cheque was given by the petitioner towards security for the chit transaction. Therefore, the petitioner wanted the respondent to produce the audited balance sheet for the period from 01.04.2009 to 31.03.2014, in order to prove that the respondent was running an unregistered chit. The learned counsel also submitted that the respondent himself has agreed during the course of cross-examination that he has filed income-tax return every year without fail. Therefore, the learned counsel would submit that the respondent should have been directed to produce the audited balance sheet, produced before the Income-Tax Department for the period from 2009-2014.

5. Per contra, the learned counsel for the respondent would submit that the respondent is an individual and therefore, no balance sheet is available and the respondent was not doing any Finance Business. The learned counsel would further submit that it is the specific case of the respondent that he was working as a Bank Manager with Indian Bank and there is no question of respondent maintaining any balance sheet. Learned counsel would further submit that the respondent had two bank accounts and the statements of accounts has already been produced before the Court below and the same has been recorded by the Court.

6. This Court has carefully considered by the submissions made on either side and also order passed by the Court below.

7. It is the specific case in the complaint that the respondent has given loan to the petitioner during the year 2011 and cheques were issued by the petitioner towards the said loan. There is also a Civil suit pending between the parties based on a promissory note. The petitioner is now seeking for a direction to the respondent to produce the audited balance sheet for the period from 01.04.2009 to 31.03.2014. This petition was also filed well after the cross examination of the respondent, which came to end on 10.11.2016. The petition came to be filed on 16.05.2017 and the matter was at the stage of arguments. The Court below has specifically given a finding that with regard to the bank accounts, the respondent himself has produced the documents and the bank Manager was also examined. The respondent had also produced the attested copy of the accounts statements for the period from 01.04.2009 to 31.03.2014 along with the counter filed in the Section 311 petition. The petitioner cannot compel the respondent to produce the balance sheet filed before the Income-Tax Department, when the respondent had taken a specific stand that no such balance is being maintained and he was only working as a Manager in a Bank.

8. Under such circumstances, this Court does not find any illegality or infirmity in the order passed by the Court below. In the considered view of this Court, sufficient materials have already been placed before the Court and the petitioner has to rebut the presumption under Section 139 of the Negotiable Instruments Act with the materials already available on record. The petitioner cannot fish for new documents in order to develope his defence.

9. In view of the above, this Court is not inclined to interfere with the order passed by the Court below. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

10. The Court below is directed to dispose of the proceedings within a period of one month from the date of receipt of a copy of this order.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

dss

To

1. The Fast Track Judicial Magistrate Court No.2,
   Coimbatore,

2. The Additional Public Prosecutor,
   Madras High Court.

+1cc to Mr.A.Thiyagarajan, Advocate SR.No.81038

+1cc to Mr.V.P.Gowtham, Advocate SR.No.81137

Crl.O.P..No.18056 of 2017

GMY10(10/12/2018)