IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2018

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.O.P.Nos.25990 and 26031 of 2018
and
CRL.MP.Nos.14932 and 14956 of 2018

Dr.C.R. Devender ...Petitioner in both Ops

Vs.

1. Mr.Govini Sathiskumar
Rep by his Power Agent Govini Balasubramani
No.18, Jambulingam Mani Road,
Annai Anjugam Nagar,
Chennai-600 082. ...Respondents in 25990 of 2018

2.Mr.Govini Balasubramani
No.18, Jambulingam Mani Road,
Annai Anjugam Nagar,
Chennai-600 082 ...Respondents in 26031 of 2018

PRAYER in Crl.O.P.No.25990 of 2018: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to pass an order calling for the records in C.C.No.575 of 2016 now pending on the file of the Learned Judicial Magistrate, Fast Track Court, Alandur and set aside the order of dismissed dated 24.09.2018 passed in Crl.M.P.No.934 of 2018 in C.C.No.575 of 2016.

PRAYER in Crl.O.P.No.26031 of 2018: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to pass an order calling for the records in C.C.No.252 of 2015 now pending on the file of the Learned Judicial Magistrate, Fast Track Court, Alandur and set aside the order of dismissal dated 24.09.2018 passed in Crl.M.P.No.935 of 2018 in C.C.No.252 of 2015.

For Petitioner : Mr.Praveen Alexander

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

COMMON ORDER

These petitions have been filed aggrieved by the orders passed by the Court below dismissing the petition filed under

Section 91 of Cr.P.C.

2. The petitioner is facing a criminal complaint under Section 138 of the Negotiable Instruments Act. The petitioner has filed a petition under Section 91 of Cr.P.C., to issue summons to the complainant to produce his Income Tax returns and Bank Account statement during the relevant period. The Court below has dismissed the said petition on the ground that the petitioner has admitted in his petition about the borrowal of Rs.1,20,00,000/- from the complainant. The Court below has also dismissed the petition on the ground that the petitioner cannot insist the complainant to produce the Income Tax Returns since the complainant may or may not have shown this transaction in the Income Tax Returns.

3. The learned counsel for the petitioner brought to the notice of this Court the cross-examination of PW1 in this regard. During the course of cross-examination, the petitioner has put sufficient questions to the complainant with regard to the amount covered under the cheques and the petitioner has also specifically questioned the complainant with regard to the transaction being shown in the books of accounts maintained by the complainant. The complainant has answered all these questions and has also made a categorical statement that he will be able to speak about the transactions being shown in the books of accounts only if he actually sees those documents. According to the learned counsel for the petitioner, by filing a petition under Section 91 of Cr.P.C, the petitioner wanted the complainant to produce these books of accounts/Income Tax returns in order to rebut the presumption under section 139 of the Negotiable Instrument Act.

4.This Court has carefully considered the submissions made by the learned counsel for the petitioner.

5. The petitioner has sufficiently questioned the complainant with regard to the transactions that is covered under the cheques. The petitioner has also questioned the complainant with regard to these transactions being shown in books of accounts/Income Tax Returns. The complainant has answered saying that he will be able to speak about the same only if he actually sees the books of accounts/Income Tax Returns. If the complainant, thereafter, does not choose to produce the relevant books of accounts/Income Tax Returns after having admitted that these transactions were in fact recorded in the books of accounts, it is for the Court below to draw an inference under Section 114 (g) of the Indian Evidence Act. For this Purpose, in the considered view of this Court the petitioner need not file a petition under Section 91 of Cr.P.C and force the complainant to produce the relevant books of

accounts/Income Tax returns.

6. The learned counsel for the petitioner also brought to the notice of this Court, the findings of the Court below which according to the learned counsel are pre-conceived findings without any materials. In the considered view of this Court, the findings of the Court below while dismissing the petition under Section 91 of the Cr.P.C are only prima facie findings and it will have absolutely no bearing upon the Court below while deciding the case on merits. The Court below shall continue further for with proceedings and shall examine the ground raised by the petitioner with regard to the cheque transactions and shall independently deal with the same on merits without being influenced by the findings given while dismissing the application filed by the petitioner under Section 91 of Cr.P.C. The Court below shall keep in mind the settled principles of law in this regard.

7. The complaints are of the year 2015 and 2016 respectively. The Court below is directed to complete the proceedings within three months from the date of receipt of a copy of this order.

8. Thus, these Criminal Original Petitions are disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

kal/rst

To
1.The Judicial Magistrate, Fast Track Court, Alandur.

2.The Public Prosecutor, Madras High Court, Chennai.

+2cc to Mr.Praveen Alexander, Advocate SR.No.76934

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JP(CO)

GMY(27/11/2018)