IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.28067 of 2018
and
Crl.M.P.Nos.16311 and 16314 of 2018

Prince Jacob ...Petitioner/Accused

Vs

Bama Balaji ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to set aside the order dated 16.10.2018 in M.P.No.1432/2018 in C.C.No.3990/2009 on the file of the learned II Fast Track Court, Magistrate Level, Chennai and set aside the same.

For Petitioner : Mr.K.N.Nataraaj

O R D E R

This petition has been filed challenging the order passed by the Court below, dismissing the application filed by the petitioner under Section 91 of the Code of Criminal Procedure.

2. The petitioner is facing trial before the Court below for an offence under Section 138 of Negotiable Instrument Act. The petitioner had put certain questions to the respondent in the course of cross- examination relating to the Income-tax Returns pertaining to the period 2008-2009 and 2009-2010. The respondent had given an answer in the course of cross-examination that he will be able to ascertain whether this amount was shown in the Income-tax Returns, only after consulting his Auditor.

3. The learned Counsel appearing for the petitioner would submit that the respondent is a Power Agent and he has misused the cheque, when the petitioner was living abroad.

4. The petitioner has made an attempt before the Court below seeking for a direction to the respondent to produce his Income-tax Returns for the period 2008-2009 and 2009-2010. The respondent, in her counter statement, has submitted that the fact regarding the debt in question, being shown in the Income-tax Returns can be ascertained only after consulting her Auditor. The respondent has also taken a stand that the petitioner has not stated as to why the Income-tax Returns will have to be produced.

5. The Court below, while considering this petition, has given a finding that the respondent has no where stated that she had lent money to the respondent during the period for which the Income-tax Returns are sought for in this case. Therefore, the Court below dismissed the petition stating that the Income-tax Returns are irrelevant for the purpose of deciding this case.

6. The learned counsel for the petitioner would submit that the petitioner has denied the entire debt/liability and therefore, if at all the respondent has given any loan to the petitioner that should have been shown in the Income-tax Returns for the relevant period. According to the learned counsel for the petitioner, this piece of evidence will enable the petitioner to rebut the presumption under Section 139 of Negotiable Instruments Act.

7. This Court has carefully considered the arguments made by the learned counsel for the petitioner and also the order passed by the Court below.

8. The petitioner has made an attempt to direct the respondent to produce the relevant Income Tax-returns for the period during which, the loan is said to have been given by the respondent to the petitioner. The respondent is not sure as to whether this loan transaction was shown in the Income-tax Returns and had answered in the cross-examination that she has to consult with her Auditor. It is for the respondent to produce the Income-tax Returns. If the Income-tax Returns are not produced, the Court below is always at liberty to draw inference under Section 114(g) of the Indian Evidence Act, 1872. The petitioner cannot force the respondent to produce the Income-tax Returns.

9. In the result, this Court does not find any ground to interfere with the order passed by the Court below. Accordingly, this Criminal Original Petition is dismissed with a direction to the Court below to complete the proceedings, within a period of

two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

rli/kal

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To
1.The Metropolitan Magistrate,
Fast Track Court at Magistrate Level,
Egmore at Allikulam Complex,
Chennai.

+1CC To Mr.K.N.Nataraaj, Advocate SR.NO.82519.

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AR(J)
KAK(12/12/2018)