



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P. (MD) .No.17483 of 2013

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Dinakaran

..Petitioner

Vs.

S.P.Ramamoorthy

.. Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for records pertaining to the case in CrI.M.P.No.4565 of 2013 in S.T.C.No.941 of 2010 dated 22.07.2013 on the file of the Judicial Magistrate No.II, Trichy and set aside the same.

For Petitioner : Ms.D.Geetha

O R D E R

The petitioner has filed this petition challenging the order dated 22.07.2013 passed in Cr.M.P.No.4565 of 2013 in S.T.C.No.941 of 2010 by the learned Judicial Magistrate No.II, Trichirappalli, thereby dismissing the petition filed by the petitioner to produce the income tax particulars including PAN number of the complainant/respondent.

2.The respondent/complainant filed a private complaint for the offence under Section 138 of the Negotiable Instrument Act, alleging that the petitioner/accused borrowed a sum of Rs.50,00,000/- from the respondent complainant by way of cash. Towards the repayment of the said borrowal, he issued cheques bearing No.516819 dated 10.08.2010 drawn on Bank of Baroda, Mount Road Branch, Chennai to the respondent. When the said cheque was presented for collection, the same was returned for the reason 'insufficient funds'. The said private complaint was taken cognizance by the learned Judicial Magistrate No.II, Trichirapalli in S.T.C.No.941 of 2010 and it is pending. At that time, after the completion of cross examination of the respondent/complainant, the petitioner/accused filed a petition under Section 91 of Cr.P.C., to summon the documents relating to income tax bills, returns and PAN card details of the respondent/complainant. The respondent/complainant filed a detailed counter stating that he has not submitted his income returns for the past 10 years and he did not file any statement of accounts for the past 7 and 8 years. Since income tax department assessed at Rs.1.5 crore of tax, against which, he filed an appeal. Therefore, considering the same, the learned Judicial Magistrate was pleased to dismiss the said petition recording the reasons. Against the said order, the petitioner has filed this criminal original petition.



3.The learned counsel appearing for the petitioner would submit that the alleged cheque amount is huge one and the respondent/complainant admitted that the transaction between the petitioner and the respondent involved in income tax returns. Therefore, he ought to have produced the income tax returns, so that the transaction between the petitioner and the respondent would reveal the truth. However, without considering this fact and circumstances, the learned Judicial Magistrate mechanically dismissed the petition. As such, he sought to set aside the order passed by the learned Judicial Magistrate.

4.Though private notice served to the learned counsel, who appeared on behalf of the respondent in the lower Court, no one appears on behalf of the respondent/complainant.

5.It is seen from the cross examination as extracted from the counter affidavit filed by the respondent/complainant that since the appeal is pending before the income tax appellate tribunal, the respondent has not filed any income tax returns for the past 10 years and also he did not file any statement of accounts for the past 7 and 8 years. The appeal filed as against the assessment of income tax is to the tune of Rs.1.5 crores. Therefore, the respondent, he himself admitted the fact that he did not file any income tax returns for the past 10 years and also he did not file any statement of account for the past 7 and 8 years. Therefore, the learned Judicial Magistrate rightly dismissed the petition filed by the petitioner/accused.

6.In view of the above discussion, this Court is of the view that there is absolutely no infirmity or illegality in the order passed by the learned Judicial Magistrate and it does not require any interference by this Court and this criminal original petition is liable to be dismissed. Further, it seems that the case in S.T.C.No.941 of 2010 is pending from the year 2010 and it is posted for defence witness and therefore, this Court deem fit to direct the learned Judicial Magistrate to complete the trial and dispose of the case, within a time frame.

7.Accordingly, this criminal original petition is dismissed. The learned Judicial Magistrate No.II, Tiruchirappalli is directed to complete the trial and disposed of the case, within a period of six months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(RTI)

/True Copy/



To

The Judicial Magistrate No.II, Trichy

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