NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CrMP No.506 of 2014

Ravindra Kishore, S/o. Gupteshwar Nath Rai, aged about 44 years, R/o. Nalanda Colony, Bariyatu, Police Station Bariyatu, District Ranchi, Civil & Revenue District Ranchi (Jharkhand)

--- Petitioner

Versus

1. Shashikant Tiwari S/o. Lallan Tiwari, aged about 44 years, R/o. Sahakari Path, In front of Telephone Office, Choubey Colony, Raipur, Police Station Saraswati Nagar, Tahsil Raipur, Civil & Revenue District Raipur (CG)
2. State of Chhattisgarh, through District Magistrate, Raipur (CG)

--- Respondents

For Petitioner	:Mr.Bhaskar Payashi, Advocate
For Respondent No.1	:Mr.Ajay Chandra, Advocate
For Respondent No.2	:Mr.Ravi Bhagat, Deputy Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

21/06/2019

1. The petitioner is an accused and standing trial for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called as "the Act of 1881") preferred by the respondent/complainant. He made an application for summoning the officer of the Department of Income Tax along with relevant documents, which was rejected by the Additional Chief Judicial Magistrate, Raipur by order dated 19.12.2013 and upheld by the revisional Court by order dated 21.3.2014, against which, this CrMP has been preferred.

2. Mr.Bhaskar Payashi, learned counsel for the petitioner, would submit that both the Courts below are absolutely unjustified in

rejecting the application, which deserve to be set aside.

3. On the other hand, Mr.Ajay Chandra, learned counsel for respondent No.1, would support the impugned order.

4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

5. The petitioner preferred an application under Section 243 read with Section 254(2) of the CrPC for calling the officer of the Department of Income Tax, Raipur along with relevant documents, which was rejected by the trial Court holding that documents are not necessary and in order to cause delay in trial, it has been filed.

6. The Supreme Court in the matter of **M/s. Dagi Ram Pindi Lall v. Trilok Chand Jain**[1] has held as under:-

> "3....When a Court of Law, in any matter pending before it desires the production of record relating to any assessment after applying its judicial mind and hearing the parties and on being prima facie satisfied that the record required to be summoned is relevant for the decision of the controversy before it - it passes a judicial order summoning the production of that record from the party having possession of the record. The Commissioner of Income-tax cannot, therefore, refuse to send the record, as he certainly is not authorised to set at naught a judicial order of a Court of Law. He must obey the order of the court by sending the record to the Court concerned indeed, it is open to the Commissioner of Income-tax to claim privilege, in respect of any document or record so summoned by a Court of Law, under Sections 123 and 124 of the Indian Evidence Act, 1872 and even then it is for the Court to decide whether or not to grant that privilege... The finality which has been attached to the order of the Commissioner under Sec.138(1)(b) of the Act is, thus restricted to the cases where the information etc., as contemplated by the Section is called for by any person, other than a Court of law by a judicial order. The High Court, therefore, fell in error in holding that the assessment records of an assessee filed before the income-tax authorities, even after April 1, 1964 are immune from production in a Court of law

1 AIR 1992 SC 990

> on summons for their production being issued by the Court and that the disclosure of any information from the record even to the Courts is subject to the veto powers of the Commissioner of Income Tax. Section 138(1)(b) does not affect the powers of the Courts to require the production of assessment records or the disclosure of any information there from to it, in a case pending before the Court when the Court, by a judicial order, requires the production of the records, considered relevant by it for decision of a case pending for it."

7. Applying the principle of law laid down by the Supreme Court in the above-stated judgment (supra) to the facts of the present case, it is quite vivid that the trial Court was required to consider the application by recording reasons. No reasons has been recorded except documents are not necessary.

8. The dispute is with regard to issuance of cheque amounting to ₹ 27 lacs, therefore, both the Courts below ought to have considered the application in proper perspective by recording the reasons, which has not been done. The trial Court has not considered the judgment of the Supreme Court in **M/s. Dagi Ram Pindi Lall** (supra) and passed the impugned order rejecting the application.

9. Accordingly, the order dated 19.12.2013 passed by the Additional Chief Judicial Magistrate, Raipur in Criminal Complaint Case No.35/2011 and affirmed by the Sessions Judge, Raipur by order dated 21.3.2014 in Criminal Revision No.38/14 is hereby set aside. The matter is remitted to the concerned Additional Chief Judicial Magistrate/Chief Judicial Magistrate, Raipur for considering the application afresh in the light of judgment of the Supreme Court in **M/s. Dagi Ram Pindi Lall** (supra) and to pass a reasoned and speaking order after hearing the parties within two weeks from the date of receipt of copy of this order.

10. The CrMP is allowed to the extent indicated hereinabove. A copy of this order be sent to the concerned trial Court by E-mail/fax.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-