IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2019

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.4613 of 2015
and
M.P.No.1 of 2015

M.R.Jayakumar ...Petitioner

-Vs-

S.Senthil ...Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order passed in C.M.P.No.176 of 2015 in C.C.No.177 of 2013 dated 28.01.2015 on the file of the Judicial Magistrate No.2, Salem and allow the CMP.

For Petitioner : Mr.J.Sudhakaran
For Respondent : Mr.R.Nalliyappan

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the petition filed under Section 91 of Cr.P.C wherein the petition had sought for the production of certain documents by the respondent.

2. The petitioner is facing trial for an offence under Section 138 of Negotiable Instruments Act. During the course of cross examination, PW1 made a statement that he is an income-tax assessee and paying the income-tax regularly and he also has an account in Tamil Nadu Mercantile Bank and that he has no objection in furnishing those documents before the Court. Since the respondent took such a specific stand, the petitioner proceeded to file a petition under Section 91 of Cr.P.C to direct the respondent to produce the books of accounts for the period from 2009 to 2014 and also the income-tax assessment for the said period.

3. The respondent filed a counter wherein he has taken a stand that those documents are irrelevant and the petition itself has been filed only to drag on the proceedings.

4. The Court below dismissed the petition on the ground that the respondent had produced all the relevant documents before the Court and the petitioner has not stated the purpose for which he wants the respondent to produce the documents mentioned in his petition filed under Section 91 of Cr.P.C.

5. The learned counsel appearing for the petitioner submitted that the petition itself came to be filed in view of the specific stand taken by the respondent during cross examination. The learned counsel further submitted that the respondent could have either produced those documents or could have stated that those documents are not available. Instead of doing so, the petition was contested and the Court below has proceeded to pass the impugned order.

6. The learned counsel for the respondent submitted that the petition itself has been filed only to drag on the proceedings and that the documents sought for by the petitioner will have no relevance to decide the complaint filed under Section 138 of Negotiable Instruments Act. The learned counsel further submitted that whatever documents are available in terms of bank statement and income-tax returns have already been submitted before the Court below.

7. This Court has carefully considered the submissions made on either side and also the materials available on record. It is true that the petitioner cannot force the respondent to produce any documents and he can only make an attempt. It is for the respondent to take a specific stand as to whether those documents are available or that they are not available. On the non-production of the documents, if the Court feels that those documents will have relevance for the purpose of deciding the complaint, adverse inference will start operating under Section 114(g) of the Indian Evidence Act. If the Court feels that the documents will be of no relevance inspite of the same not being produced in the court, the court can disregard the same and can proceed further to decide the complaint based on the materials available on record. In other words, this exercise purely falls within the realm of appreciation of evidence.

8. In view of the above, this Court is of the considered view that the Court below could have taken an easy route of asking the respondent to produce the documents if available or make a statement that the documents are not available. The relevancy of those documents and the purpose for which it was sought for will thereafter be considered at the time of appreciation of evidence.

9. The reasoning given by the Court below that the petitioner has not pleaded the purpose for which he had sought

for the documents from the respondent, cannot stand the test of law. How the petitioner is going to project his defence with those documents is something which the petitioner need not state in his petition. It was relevant on the part of the petitioner to have sought for those documents, in view of the specific stand taken by the respondent during the cross-examination. Therefore, it cannot be said that the entire documents sought for by the petitioner is irrelevant.

10. In this view of the matter, the order passed by the Court below requires interference.

11. In the result, this Criminal Original Petition is allowed and the order passed by the Court below in C.M.P.No.176 of 2015 is hereby setaside. The respondent is directed to produce the documents sought for by the petitioner before the trial Court within a period of two weeks from the date of receipt of a copy of this order. If the respondent is not in possession of those documents or is not willing to produce those documents, he may take a specific stand to that effect before the trial Court and it is thereupon left to the trial Court to decide the issue in accordance with law at the time of appreciation of evidence. The trial Court is directed to complete the proceedings in C.C.No.177 of 2013 within a period of two months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate No.II,
Salem.

+1cc to Mr.J.Sudhakaran, Advocate, S.R.No.45717

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RSV(CO)
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