IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.O.P.No.6321 of 2018
and Crl.M.P.No.3195 of 2018

Rajesh .. Petitioner

Vs.

Ramalingam .. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to pass an order to set-aside the dismissal order dated 09.02.2018 passed by the Judicial Magistrate, Thirukoilur in C.M.P.No.601 of 2018 in C.C.No.60 of 2012.

For Petitioner : Mr.Arivazhagan

For Respondent : Mr.J.Ramakrishnan

ORDER

The petition herein disputes the liability on the impugned cheque. According to the learned counsel for the petitioner, the complainant had not submitted his returns during the year 2010-11 insofar as relates to the income of Rs.15 lakhs. In the cross-examination, though the complainant admits that he has been assessesed for a long time period, he has stated that he does not remember as to whether this amount of Rs.15 lakhs was disclosed in his returns for the period of 2010-11.

2.In this connection, the petitioner had filed a petition under Section 91 of Cr.P.C., and it came to be rejected, by observing that the respondent herein had not specifically stated as to whether he has filed an income tax returns for the year 2010-11 or not.

3.In my view, if this aspect is further clarified as to whether the petitioner had submitted his returns for the income of R.15 Lakhs, by recalling PW1, the issue as to whether the Income Tax Officer should be summoned under Section 91 of Cr.P.C. could be determined.

4.In the light of the above observations, the petitioner herein is permitted to file an application for recall and re-examination of PW1 for the limited purpose of establishing the fact as to whether the complainant had filed the returns for the period of 2010-11 for the impugned income of Rs.15 lakhs or not and on receipt of the application, the learned Judicial Magistrate shall permit such cross-examination, within one week from the date of receipt of the application. It is made clear that the petitioner herein shall endeavor to complete the cross-examination on the same day, when the permission is granted. Pending outcome of the cross-examination, if PW1 admits that he has filed the returns, the petitioner would be at liberty to file an application under Section 91 of Cr.P.C., otherwise there would not be any necessity for the petitioner to summon the Income Tax Officer if the returns have not been filed for the relevant year. The trial Court also endeavor to complete the main proceedings as expeditiously as possible, in any event, within a period of three months from the date of receipt of a copy of this order.

6.Accordingly, this criminal original petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ssr

To

The Judicial Magistrate, Thirukoilur.

+1 cc to Mr.S.Arivazhagan, Advocate, S.R.No.84356

+1 cc to Mr.J.Ramakrishnan, Advocate, S.R.No.83697

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(CO)
SSM(04/11/2019)