IN THE HIGH COURT OF JUDICATURE AT MADRAS
Date : 28.01.2019

CORAM:
THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.2136 of 2019
and
Crl.M.P.No.1345 of 2019

M.Thirumurugan ...Petitioner

Vs.

V.Ganesamoorthy ... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order dated 25.09.2018 in C.M.P.No.5848 of 2018 in S.T.C.No.277 of 2016 on the file of Judicial Magistrate No.II, Tiruppur.

For Petitioner : Mr.K.Sudhakar

ORDER

This petition has been filed against the order passed by the Court below dismissing the petition filed under Section 91 Cr.P.C.

2.The petitioner is facing trial before the Court below for an offence under Section 138 of Negotiable Instrument Act. P.W.1 was cross examined by the petitioner on 26.03.2018. Thereafter the case was posted for the cross-examination of the defence witnesses. At this stage, a petition came to be filed by the petitioner under Section 91 Cr.P.C seeking to direct the respondent to produce certain documents. This petition has been dismissed by the Court below on the ground that the petitioner is attempting to drag on the proceedings and the petitioner has not stated as to why these documents are necessary for the purpose of establishing the defence.

3.The learned counsel for the petitioner submitted that the respondent during the cross examination has categorically admitted that the loan amount given to the petitioner has been shown in the books of account and also in the income tax return filed during the relevant period. These documents were not marked on the side of the respondent. Therefore, the petitioner in order to rebut the presumption under Section 139 of the Negotiable Instrument Act, filed a petition under Section 91 Cr.P.C., for a direction to the respondent to produce those documents. The learned counsel for the petitioner further submitted that if these documents are not produced, the petitioner cannot put any questions to the respondent regarding the loan amount being shown in the books of account and in the income tax returns.

4.This Court has carefully considered the submission made by the learned counsel for the petitioner. The petitioner has made attempts to direct the respondent to produce the relevant documents. In the cross examination, the respondent has taken a stand that the loan amount has been shown in the books of account and also in the income tax returns. If the respondent does not produce these documents, the petitioner cannot compel him to produce the documents except that the petitioner can request the Court below to draw adverse inference on the conduct of the respondent and it is for the Court below to consider the same in accordance with law and on appreciation of evidence.

5.This Criminal Original petition is disposed of 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, the connected Crl.M.P.No.1345 of 2019 is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

vsg1/ia

To

The Judicial Magistrate No.II,
Tiruppur

+1cc to Mr.K.Sudhakar, Advocate, S.R.No.6550.

Crl.O.P.No.2136 of 2019

rrs 13/02/2019