

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2019

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THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.Nos.2778 & 2782 of 2019
and
Crl.M.P.No.1804 of 2019

M.S. Rajapandiyan . . . Petitioner in both OPs

Vs.

G.Palani .. Respondent in both OPs

PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 10.12.2018 in CMP.Nos.2422 and 2424 of 2018 in STC.No.55 of 2016 on the file of the Judicial Magistrate No.2 at Walajapet, Vellore District.

For Petitioner : Mr.K.Myilsamy
(in both Ops)

COMMON ORDER

These petitions have been filed challenging the orders passed by the Court below dismissing the petitions filed by the petitioner under Section 91 of Cr.P.C.

2.The petitioner is facing trial before the Court below for an offence under Section 138 of the Negotiable Instruments Act. It is the case of the petitioner that during the course of cross-examination, the petitioner had put several questions to the respondent touching upon debt/liability and had specifically asked the respondent as to whether the loan amount was reflected in the income-tax returns filed by the respondent during the relevant point of time and also the bank statements. The respondent had affirmed that it was reflected in those records. However, these records were not produced before the Court in spite of giving statements to that effect.

3.The petitioner therefore filed a petition under Section 91 of Cr.P.C. seeking for a direction to the respondent to produce the income-tax returns and the bank statements during the relevant point of time. The respondent without taking any stand on the availability of these records, has merely stated in the counter that the petitioner is attempting to protract the proceedings.

4.The Court below dismissed the petition filed by the petitioner solely on the ground that the petitioner has not stated as to how these records were relevant for the purpose of proving his defense. The Court below has also given a finding that the petitioner is attempting to protract the proceedings.

5.The learned counsel for the petitioner submitted that unless and otherwise the respondent produces the relevant income-tax returns and also the bank statements, the petitioner will not be in the position to effectively rebut the presumption under Section 139 of Negotiable Instruments Act.

6.This Court does not find any infirmity or illegality in the order passed by the Court below. The petitioner has made efforts to make the respondent produce the income-tax returns and bank statements. This was due to the fact that the respondent himself admitted in the cross-examination that the loan was reflected in these documents. If the respondent chooses not to produce those documents, the petitioner cannot compel him to produce those documents and it is left open to the Court to take adverse inference under Section 114(g) of the Indian Evidence Act, based on the appreciation of evidence.

7.Accordingly, this Criminal Original Petition is disposed of and the Court below is directed to complete the proceedings within a

period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

kal/vsn

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Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Judicial Magistrate No.2,
Walajapet,
Vellore District.

+1cc to Mr.K.Mylsamy, Advocate, S.R.No.8851

CrI.O.P.Nos.2778 & 2782 of 2019
and
CrI.M.P.No.1804 of 2019

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