IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.10581 of 2019
and Crl.M.P No.5466 of 2019

P.A.Gayathri Devi ... Petitioner

vs.

Sakthivinayagalakshmi ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 27.12.2018, in Crl.M.P.NO.2856 of 2018 in C.C.No.2525 of 2016 on the file of the XX Metropolitan Magistrate, Ripon Building, Chennai by allowing the present Criminal Original petition.

For Petitioner : Mr.B.Kumarasamy

For Respondents : Mr.R.Rajarajan

O R D E R

This petition has been filed challenging the order passed by the Court below allowing the application filed by the respondent under Section 91 of Cr.P.C. by directing the petitioner to furnish certain documents.

2. The learned counsel for the petitioner submitted that the Court below while allowing the application filed by the respondent had directed the petitioner to produce Income Tax Returns, Income Tax Returns ledgers and the sale document. The learned counsel submitted that the petitioner is in possession of only Pan Card, bank statement and the sale deed dated 03.04.2009 and same will be produced before the Court below. The learned counsel further submitted that the Court below could not have directed the petitioner to produce the documents which are not in possession of the petitioner.

3. Per contra the learned counsel for the respondent submitted that the documents that were directed to be produced were all admitted documents during the course of the cross-examination of the petitioner. The Court below has rightly directed the petitioner to produce those documents and the

petitioner, after having admitted the availability of those documents during the cross-examination, cannot go back on the statement and refuse to produce those documents. The learned counsel submitted that the respondent questioned the source of income of the petitioner and also contested the issue of liability and therefore the production of income tax returns and account books is necessary for the court below to see if the petitioner sufficiently had funds and whether the loan has been reflected in the income tax returns.

4. This Court has carefully considered the submissions made on either side.

5. The petitioner during cross-examination has made certain admission regarding the possession of certain documents. The Court below has therefore thought it fit to direct the petitioner to produce those documents. If the petitioner is not in possession of those documents, she cannot be compelled to produce those documents and it will be left open for the Court below to gather necessary inferences based on the appreciation of the evidence.

6. The learned counsel for the petitioner submitted that the petitioner is in possession of only the pan card, bank statements and sale deed dated 03.04.2009 and same will be produced before the Court below. Apart from that, the petitioner is not in a position to produce the income tax returns and the books of accounts.

7. The Court below shall receive the documents filed by the petitioner and it is left open to the Court below to draw its own inferences based on the appreciation of evidence and come to a final conclusion after taking into consideration the facts and circumstances of the case. In the result, this Criminal Original Petition is disposed of with a direction to the Court below to complete the proceedings in CC.No.2525 of 2016 within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The XX Metropolitan Magistrate,
   Ripon Building, Chennai

2. The Chief Judicial Magistrate,
   Egmore, Chennai - 8.

3. The Public Prosecutor,
   High Court of Madras,
   Madras.

+1 cc to Mr.B.Kumarasamy, Advocate, S.R.No.49940

+1 cc to Mr.R.Rajarajan, Advocate, S.R.No.50334

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KS(CO)
SSM(18/07/2019)