IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.OP.NO.23701 OF 2014
AND
CRL.M.P.NO.1 OF 2014

V.Selvakumar ...Petitioner/Accused

Vs.

R.M.Subramaniam ....Respondent/Complainant

PRAYER:
Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed in C.M.P.No.3283 of 2014 dated 04.08.2014 on the file of Judicial Magistrate, Kangayam and allow this petition with cost.

For Petitioner : Mr.A.K.Sridharan

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed against the order passed by the Court below in a petition filed by the petitioner under Section 91 of Cr.P.C.

2.The petitioner is facing trial for an offence under section 138 of Negotiable Instrument Act. During the course of trial, the petitioner filed a petition under Section 91 of Cr.P.C to send for the Blue Book Register with respect to the respondent in order to get assessment particulars of the respondent made before the income-tax authorities.

3. The Court below has dismissed the said petition mainly on the ground that the complainant himself has deposed that he was working in the Tamil Nadu State Transport Corporation for 18 years and he is not an income-tax assessee and therefore, no useful purpose will be served by sending the Blue Book Register

in order to ascertain the assessment particulars of the respondent. The Court below, therefore found that no useful purpose will be served by entertaining the petition.

4. The learned counsel for the petitioner submitted that the petitioner has taken a specific defence denying the entire liability and that the respondent had never lent such a huge amount of Rs. 20 Lakhs as claimed in the complaint. The learned counsel submitted that the respondent has taken a specific stand during trial that he is not an income-tax assessee. However, there is a pan card standing in the name of the respondent and therefore, the petitioner wanted to get the assessment particulars of the respondent in order to prove that the so-called amount that was claimed to be lent to the petitioner was not shown in the income-tax assessment.

5. This Court has carefully considered the submissions made by the learned counsel for the petitioner and the materials available on record. The presumption under Section 139 of Negotiable Instrument Act is a rebuttable presumption. The presumption can be rebutted even by making use of the evidence adduced on the side of the complainant and it is not even necessary for the defence to get into the box for the said purpose. The law on this issue is well settled by now.

6. The specific defence taken by the petitioner is that he has not borrowed any money from the respondent and if at all, the respondent had possessed huge amounts of money, he should have been an income tax assessee and shown the loan in his income-tax assessment during the relevant accounting year. The respondent has taken a very specific stand that he is not an income tax assessee and he has never paid income-tax during his service with Tamil Nadu State Transport Corporation. When the respondent takes such a stand, it is for him to establish the source of money and existence of debtor liability since the same cannot be presumed under section 139 of Negotiable Instrument Act. It is not necessary for the petitioner to take efforts to prove the same for the respondent.

7. Therefore, the Court below was right in saying that no useful purpose will be served by calling for the assessment particulars of the respondent when he is not even an income-tax assessee. This Court does not find any illegality or infirmity in the order passed by the Court below.

8. In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in C.C.No.244 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/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mpa/uma

To

1. The Judicial Magistrate,
   Kangayam

2. Do Thro' The Chief Judicial Magistrate,
   Tiruppur District.

+1cc to Mr.A.K.Sridharan, Advocate, S.R.No.45504

CRL.OP.No.23701 of 2014
and
Crl.M.P.No.1 of 2014

VGII(CO)
CS/13/06/2019