

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.21459 of 2019
and
Crl.M.P.No.11081 of 2019

D.Srinivasan

... Petitioner

vs.

Geetha

... Respondent

PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, praying to set aside the order passed in CMP.No.1647 of 2019 in C.C.No.51 of 2017 on the file of Judicial Magistrate, Fast Track Court, Dharmapuri, order dated 02.07.2019.

For Petitioner : Mr.S.Veeraraghavan

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 91 of Cr.P.C to issue summons to the Manager of the bank in which the respondent is having an account and to call for the records.

2.The petitioner is facing trial before the Court below for an offence under Section 138 of the Negotiable Instruments Act. The main defence that was taken by the petitioner is that he never took any loan from the respondent and that the respondent does not have the financial wherewithal to lend money to the petitioner. In order to substantiate this defence, the petitioner had put necessary questions to the respondent at the time of cross examination. That apart, the petitioner wanted the bank account particulars of the respondent in order to establish that the respondent does not have the money to lend the cheque amount to the petitioner at the relevant point of time.

3.The Court below dismissed the application mainly on the ground that the petitioner has already raised the defence questioning the income and its source and therefore, it is for

the respondent to prove his source of income by producing necessary evidence and the petitioner need not take such an effort on behalf of the respondent.

4.The learned counsel for the petitioner submitted that the bank particulars of the respondent is necessary since the petitioner has to rebut the presumption under Section 139 of the Negotiable Instruments Act.

5.This court has carefully considered the submissions made on behalf of the petitioner and the materials available on records.

6.The petitioner has put substantial questions to the respondent during cross examination questioning the source of his income. The petitioner has also taken steps to direct the respondent to furnish his bank details. Therefore, the petitioner has taken all steps from his side to make the respondent show his source of income. If the respondent chooses not to show the source of income, necessary inference will be drawn under Section 114 (g) of the Indian Evidence Act.

7.This court does not find any illegality or infirmity in the order passed by the Court below. The Court below has given the correct reasons for dismissing the application. In the result, the Criminal Original petition is dismissed and the Court below is directed to complete the proceedings in C.C.No. 51 of 2017, within a period of three months from the date of receipt of copy of the order. Consequently, connected miscellaneous petition is closed.

rri

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate,
(Fast Track Court), Dharmपुरi.

+1cc to Mr.S.Veeraraghavan, Advocate, SR.No.68157

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Kak(20/09/2019)