IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. No.8088 of 2017
and Crl.M.P.Nos.5823 & 5824 of 2017

1. M/s.Car Care,
   Rep. by its Proprietor,
   M.Narayanasamy,
   S/o.Murugesan
   No.254, Pollachi Road,
   Near Fire Service Station,
   Udumalpet - 642 126.

2. M.Narayanasamy ... Petitioners

Vs.

V.Rajeshwari ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order of dismissal date 24.03.2017 in Crl.M.P.No.1245/2017 in STC No.323/2016 dismissing the section 91 of Cr.P.C., passed by of the Learned Fast Track Court Magistrate Level No.II at Poonamallee.

For Petitioners : Mr.V.T.Narendiran

For Respondent : M/s.Amar D.Pandiya

ORDER

This petition has been filed challenging the order passed in Crl.M.P.No.1245/2017 in STC No.323/2016 dated 24.03.2017 thereby dismissing the petition filed by the petitioners under Section 91 Cr.P.C.

2. The learned counsel for the petitioners would submit that the petitioners are accused. The respondent filed complaint under Section 138 of Negotiable Instruments Act. The crux of the allegation is that the second petitioner borrowed a sum of Rs.15 lakhs in 2011 and 2013 from the respondent and to repay the same, he issued three cheques. Those cheques were presented for collection and returned dishonoured. Hence, the complaint. During the trial, the complainant had examined herself as PW1 to

prove the legal validity of the transaction. Therefore, the petitioners filed a petition under Section 91 Cr.P.C. for a direction against the respondent to produce the audited Income Tax Returns filed by the complainant for the years 2012-2013, 2013-2014 and also seeking bank statement for the payment of money to the accused. He further submitted that the respondent filed counter and he did not aware that the respondent is not an Income Tax assessee and he is not possessing the statement of accounts. Even then, the court below without considering the same dismissed the petition. Therefore, he prayed to set aside the said order dated 24.03.2017.

3. The learned counsel for the respondent submitted that the complaint was lodged by him for the offences punishable under Section 138 of Negotiable Instruments Act. In fact, by the reply notice, 17.06.2016, the petitioner admitted his liability and as such he is liable to pay the amount. But to escape from clutches of law, the petitioners have filed this petition under Section 91 Cr.P.C. only to drag the proceedings. Further he submitted that he is not an income tax assessee. Therefore he does not have any IT returns for the years 2012-2013 and 2013-2014. Further he submitted that he produced the bank statement and he is ready and willing to release the bank statement for those years.

4. Heard, the learned counsel for the petitioners and the learned counsel for the respondent.

5. The petitioners filed petition under Section 91 Cr.P.C. to produce documents related to the Income Tax returns filed by the respondent for the year 2012-2013, 2013-2014 and the bank statement evidencing the payment of the money to the petitioners. It is also seen that the petitioners replied by letter dated 17.06.2016 stating that he had big loss in his business and not able to pay in time and further stated that he planned to sell his property and settle the issue. Therefore, he requested three to four months for entire settlement. It shows that the petitioners admitted their liability and now the petitioners have sought for the above documents stated supra only to prove whether the payment made by the respondent is legally enforceable or not. Without going into the merits of the case as admitted by the learned counsel for the respondent, he is ready and willing to produce the bank statement. In respect of IT returns are concerned, admittedly the respondent is not an Income Tax assessee. Therefore, no question of producing the IT returns before the court.

6. Considering the above facts and circumstances of case, the order in Crl.M.P.No.1245/2017 in STC No.323/2016 dated 24.03.2017 is set aside and the respondent is directed to

furnish only the statement of accounts for the years 2011-2012 and 2012-2013 so that the petitioners can cross examine effectively. Further, considering the case is of the year 2016, the learned Fast Track Court Magistrate Level No.II at Poonamallee is directed to complete the entire proceedings in STC No.323/2016 within a period of three months from the date of receipt of a copy of this Order.

7. With the above observations, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

pds/lok

To

The Fast Track Court,
Magistrate Level No.II,
Poonamallee,
Thiruvallur District.

+1 cc to M/s.Amar D.Pandiya, Advocate, S.R.No.20575

+1 cc to Mr.V.T.Narendiran, Advocate, S.R.No.20640

Crl.O.P. No.8088 of 2017
and Crl.M.P.Nos.5823 & 5824 of 2017

CP(CO)
SSM(10/04/2019).