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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P.No.12762 of 2017
and
Crl.M.P.No.8322 of 2017

Maharishi Arul Ghana Jothi ... Petitioner/Accused

Vs.

Rajavel ... Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C., praying to set aside the order dated 13.06.2017 made in C.M.P.No.1530 of 2017 in S.T.C.No.36 of 2015 on the file of the Judicial Magistrate, Fast Track Court, Thiruthuraipoondi.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : Mr.A.Sundaravadhanan

O R D E R

This Criminal Original Petition has been filed against the order passed by the Judicial Magistrate, Fast Track Court, Thiruthuraipoondi, dated 13.06.2017, in C.M.P.No.1530 of 2017 in S.T.C.No.36 of 2015, dismissing the application filed by the petitioner under Section 91 Cr.P.C. to direct the respondent/complainant to produce documents pertaining to his source of income.

2.The petitioner is facing trial before the Court below for the offence under Section 138 of the Negotiable Instruments Act. The respondent/complainant was examined as P.W.1 and he was also cross-examined by the petitioner. Even though the petitioner admitted the signature found in the cheque, it is the specific case of the petitioner that the cheque has been misused and he has not borrowed a sum of Rs.20,00,000/- (Rupees twenty lakhs only) as claimed by the respondent and in fact, the respondent does not have any source to possess such a huge amount. Therefore, the petitioner had put certain questions to the respondent during cross-examination and had elicited certain answers, wherein, the respondent has admitted that there are



documents to show his source of income. Therefore, the petitioner has filed the present application under Section 91 Cr.P.C. to direct the respondent to produce the documents relating to his source of income.

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3.This application was dismissed by the Court below on the ground that, it is for the petitioner to rebut the presumption under Section 139 of the Negotiable Instruments Act, based on his evidence and unless he rebuts the same, he cannot ask the respondent to produce any document to substantiate his case.

4.The learned counsel for the petitioner submitted that the respondent does not have any source of income in order to prove that he had lent a sum of Rs.20,00,000/- (Rupees twenty lakhs only) to the petitioner. The learned counsel further submitted that, if at all the respondent had the source of income, he would have produced the relevant documents before the Court below, but he had failed to do so. Therefore, the petitioner took an effort of making the respondent to produce the relevant documents to prove his source of income.

5.Per contra, the learned counsel appearing on behalf of the respondent submitted that the respondent has not specifically admitted the availability of documents pertaining to his source of income and he has only made a general statement that there are documents which are available. The learned counsel further submitted that the petitioner, without particularly identifying any document, cannot file a petition and seek for a general relief that the respondent should produce all the documents pertaining to his source of income. The learned counsel submitted that the Court below has properly applied its mind and has dismissed the application and there is no ground to interfere with the same.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.According to the petitioner, the respondent at the time of cross-examination has made a submission to the effect that, if the Court issues notice and asks the respondent to show his source of income, he will be able to furnish the relevant documents. Based on this statement, the petitioner has filed the present application under Section 91 Cr.P.C. to direct the respondent to produce the relevant documents showing his source of income.



8.The Court below has dismissed this application on the ground that it is not necessary for the respondent to produce any document, since, the petitioner does not state which specific document has to be produced by the respondent.

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9.This Court is of the considered view that the petitioner has elicited some answers from the respondent in the course of cross-examination. The petitioner has also taken efforts to make the respondent produce documents to prove his source of income. It is thereafter left to the respondent to produce those documents or choose not to produce those documents. He cannot be compelled to produce any document. Under such circumstances, it is left open to the Court below to draw its own inference under Section 114 of the Indian Evidence Act, 1872, based on appreciation of evidence.

10.This Court is not inclined to interfere with the order passed by the Judicial Magistrate, Fast Track Court, Thiruthuraipoondi, dated 13.06.2017, in C.M.P.No.1530 of 2017 in S.T.C.No.36 of 2015. In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. The court below is directed to complete the proceedings in S.T.C.No.36 of 2015, within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mkn
To

The Judicial Magistrate,
Fast Track Court,
Thiruthuraipoondi.

+1cc to M/s.K.S.Karthik Raja, Advocate Sr.57177
+1cc to M/s.A.Sundaravadhanan, Advocate Sr.57193

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