IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.25938 of 2017
and
Crl.M.P.No.14960 of 2017

Rahul K. Jain ... Petitioner/Complainant

Vs.

Jayanthilal ... Respondent/Accused

Prayer: This Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order passed by the learned Metropolitan Magistrate FTC -IV, George Town, Chennai-1 in Crl.M.P.No.5228 of 2017 in C.C.No.2155 of 2013, 1080 and 1081 of 2014 and allow the Crl.M.P.No.5228 of 2017 filed under Section 91 of Cr.P.C. filed by the petitioner.

For Petitioner : Mr.Rajendra Prasad Tayal

For Respondent : Mr.Ramesh Kumar Chopra

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 91 of Cr.P.C., by the petitioner directing the respondent for the purpose of summoning certain documents.

2. It is seen from the records that the petitioner is facing trial before the Court below for an offence under Section 138 of the Negotiable Instruments Act. During the course of trial, the petitioner filed a petition under Section 91 of Cr.P.C for the purpose of summoning certain documents and in order to establish the fact that the respondent did not have any source of income or flow of income and that he could not have lent such a huge amount of Rs.9,00,000/- to the petitioner.

3. The Court below dismissed the petition on the ground that the petitioner had taken a specific defence to the effect that the cheques were taken from him by force in the police station. Therefore, the documents that were sought to be summoned to test the financial wherewithal of the respondent may not be relevant for the purpose of deciding the case.

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4. The learned counsel for the petitioner submitted that subsequent to the dismissal of the petition, the trial continued and the petitioner examined himself on the side of the defence and all the necessary documents were also summoned except the income-tax returns of the respondent. Therefore, the learned counsel for the petitioner would submit that the income-tax returns filed by the respondent is very much essential for the purpose of ascertaining the source of income and also the flow of income of the respondent and whether the respondent had so much of money to lend the same to the petitioner.

5. The learned counsel for the respondent submitted that the respondent has already filed the Statement of Accounts and the income- tax returns and therefore, there is no necessity for the respondent to again file the same income-tax returns.

6. This statement was controverted by the learned counsel for the petitioner stating that what was filed was only an acknowledgment for filing of the income-tax return and that the entire income-tax papers have not been filed before the Court.

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

8. The present petition confines itself as to whether the petitioner is entitled to call for the income-tax returns filed by the respondent before the concerned authority. The petitioner wants to develop his defence that the respondent does not have any source of income to lend a sum of Rs.9,00,000/- to the petitioner and if at all, such a huge amount has been given to the petitioner, the same would have been reflected in the income-tax returns. The petitioner has taken the effort to make the respondent to furnish the income-tax returns. It is left open to the respondent to file the income-tax returns or remain noncommittal about it. Ultimately during the appreciation of evidence, the Court below will have to take into consideration and draw its own inference while deciding the case. The respondent claims that the returns has already been filed before the Court. Whatever papers have been filed before the Court by the respondent, shall form part of the evidence and the petitioner can raise his contention before the Court below regarding the financial wherewithal of the respondent and it is for the Court below to decide the same based on the evidence collected during the trial.

9. This Court does not want to interfere with the order passed by the Court below and the Court below is directed to

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decide the case on its own merits and in accordance with law and complete the proceedings within a period of two months from the date of receipt of a copy of this Order.

10. In the result, this Criminal Original Petition is disposed of with the above directions.

Sd/-
Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

vv/kal

To

1. The Judicial Magistrate (FTC),
   Tiruchengode.

2. -do - Through The Chief Metropolitan Magistrate
   Egmore, Chennai

+1cc to Mr.Rajendra Prasad Tayal, Advocate SR.No.47205

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GJ(CO)
GMY(19/07/2019)

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