IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:
THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
Crl.OP.No.33438 of 2019
and
Crl.MP.No.18425 of 2019

N.Sudhagar

... Petitioner /Accused

Vs.

A.Badhrudheen

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records relating to the Order dated 19.09.2019 passed in C.M.P.No.5470 of 2019 in S.T.C.No.321 of 2018 on the file of the Fast Track Judge-Cum-Judicial Magistrate No.1, Erode and set aside the same.

For Petitioner : Mr.M.Arunachalam

ORDER

This petition has been filed by the accused to set aside the order passed by the Judicial Magistrate, (Fast Track Court No.1) in CMP.No.5470 of 2019 in STC.No.321 of 2018 dated 19.09.2019.

2. The learned counsel for the petitioner has submitted that the petitioner is facing trial for the alleged offence under Section 138 of the Negotiable Instruments Act. He further submitted that after closing the prosecution evidence and questioning under Section 313 of Cr.P.C, when the matter has been posted for defence side evidence, the petitioner/accused has filed an application under Section 254(2) of Cr.P.C in CMP.No.5470 of 2019 to permit him to examine the Income Tax Officer, the Bank Manager, Manager of one Gokulam Chit Funds and one P.S.Saravanan. The learned Judicial Magistrate has partly allowed the said petition permitting the petitioner to examine the witnesses 2 to 4, so far as witness No.1 is concerned, the learned Judicial Magistrate has dismissed the said petition. He further submitted that since the complainant while examining himself as P.W.1 has admitted in his cross-examination that if the Court directs, he will produce his income tax return. He further submitted that in the said

petition itself, the learned counsel for the respondent/complainant has made an endorsement as no objection for allowing the said application and without considering the said facts, the learned Judicial Magistrate has dismissed the said petition in respect of the witness No.1 viz., the Income Tax Officer and hence, he prayed to set aside the order passed by the learned Judicial Magistrate and permit the petitioner to examine the witness No.1 (Income Tax Officer).

3.Since the counsel for the respondent/complainant made an endorsement in the petition as no objection, this court is of the view that notice in this petition need not be sent to respondent/complainant. Accordingly, notice to the respondent/complainant is dispensed with.

4. Considering the evidence given by P.W.1 that he is ready to produce income tax return provided the Court directs, the petitioner is directed to give a notice to the respondent/complainant for producing income tax returns and in-spite of the said notice, if the respondent/complainant failed to produce the said income tax return, it is open to the petitioner /accused to argue at the time of disposal of the main case to draw adverse inference against the complainant. In any such argument is made, it is for the trial court to decide as to whether adverse inference has to be drawn or not.

5. With the aforesaid observations, this petition is disposed of. Consequently connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS I)

/true copy/
Sub Asst. Registrar

vv
To
The Fast Track Judge-Cum-Judicial Magistrate No.1,
Erode
+1 cc to Mr.AR.M.Arunachalam Advocate sr103074
Crl.O.P.No.33438 of 2019

and
Crl.MP.No.18425 of 2019

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