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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Original Petition No.7689 of 2013
and M.P.Nos.1 and 2 of 2013

M.Palanisamy .. Petitioner/Accused

.. Vs ..

K.Parameswaran .. Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order dated 08.02.2013 passed by the learned Judicial Magistrate No.I, Pollachi, in C.M.P.No.882 of 2013 in C.C.No.485 of 2008.

For Petitioners : Mr.L.Mouli

For Respondents : Mr.K.Eswar Rao

for M/s.Sampath Kumar Associates.

ORDER

The respondent is the complainant. Petitioner is the accused in the complaint in C.C.No.485 of 2008 on the file of Judicial Magistrate No.I, Pollachi. It is informed that subsequently the matter was transferred to Judicial Magistrate No.II, Pollachi. Now the case is pending before the learned Magistrate, No.II, Pollachi, in S.T.C.No.328 of 2016. When the matter is pending before the learned Magistrate No.I, Pollachi, in C.C.No.485 of 2008, the petitioner herein filed petition in CrI.M.P.No.882 of 2013 under Section 91 of Cr.P.C., for production of certain documents. After enquiry, the learned Magistrate dismissed the petition. Challenging the said order passed by the Magistrate in CrI.M.P.No.882 of 2013, the accused has filed the present petition before this court under Section 482 Cr.P.C.

2. The learned counsel for the petitioner would submit that during the cross examination, the respondent herein admitted that he has agricultural lands and he has derived income from the agricultural lands. Therefore, the petitioner/accused filed a petition before the Magistrate, to direct the respondent herein to produce certain documents. But, the learned Magistrate failed to consider these aspects and dismissed the petition, which warrants interference of this court.



3. The learned counsel for the respondent/complainant would submit that C.C., was pending from 2008. After enquiry, during the arguments, the petitioner herein/accused has filed the petition in Crl.M.P.No.882 of 2013, seeking production of certain documents, only to drag on the proceedings. Further, he would submit that the respondent/complainant shown the disputed amount in the Income Tax Returns and the learned Magistrate considered the same and dismissed the petition.

4. I have heard the submissions made on either side and perused the records.

5. Admittedly, the respondent filed a Private complaint against the petitioner herein under Section 200 Cr.P.C., for the offence under Section 138 of the Negotiable Instruments Act. The same was taken on file in C.C.No.485 of 2008 on the file of learned Judicial Magistrate No.I, Pollachi. During the enquiry, after examining the respondent/complainant side evidence, the petitioner/accused has filed the petition under Section 91 Cr.P.C. The petition was numbered as Crl.M.P.No.882 of 2013 and the same was dismissed by the learned Magistrate.

6. A bare perusal of the Crl.M.P.No.882 of 2013 filed by the petitioner, shows that he sought direction of the Magistrate to direct the respondent to produce certain documents viz.,

"1. Three bank pass books belongs to Respondent/Complainant namely ICIC Bank, Pollachi branch, AXIS Bank Pollachi Branch, SBI Pollachi Branch.

2. Patta Pass Book or Computer Chita belongs to Respondent/Complainant and Hindu Undivided Family property and his mother.

3. Agriculture land lease deed.

4. Loan amount made by Respondent/Complainant which are entered in day book of Cash maintained by the Respondent/Complainant relating to the period of 2003 to 2008.

5. Details of creditors which are entered in day book of double entry, Cash book and Profit & Loss A/c.Bills, Vouchers and Balance Sheet of regular maintained by the Respondent/Complainant relating to the period of 2003 to 2008.

6. Money lending licence issued by Pollachi Thasildar under the Tamil Nadu Money Lenders Act, 1957.

7. Details of Cheque case filed by Respondent/Complainant before Hon'ble J.M.No.1,



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Pollachi and connected copy of Cheque case complaint.

(1) C.C.No.261/2004 - Accused Selavaraj Namakkal - filing dated 14.06.2004.

(2) C.C.No.262/2004 - Accused Kalaivani Namakkal - filing date 14.06.2004.

(3) C.C.No.350/2004 - Accused P.T.Kumar others Chennai - filing dated 06.08.2004.

(4) C.C.No.351 of 2004 - Accused P.T.Kumar others Chennai - filing date 06.08.2004.

(5) C.C.No.396/2004 - Accused Palanisamy Nagamam - filing date 17.06.2004.

(6) C.C.No.244/2005 - Accused Banumathi R.S.Puram Cbe- filing dated 26.04.2005.

(7) C.C.No.298/2005 - Accused Sathiskumar Kaniyour Udumalai - filing dated 26.04.2005. "

The learned Magistrate found that the above petition was filed belatedly. Even during the evidence, the respondent has stated that the disputed amount has been shown in the Income Tax Returns. But the petitioner herein not even asked the respondent to produce the Income Tax Returns, but simply the petitioner sought for a direction to produce other documents which is not relating to the respondent. Therefore, the learned Magistrate observed that since the respondent stated that those documents are not available, therefore, if at all the petitioner is able to prove the fact that those documents are available with the respondent, then adverse inference could be drawn against the respondent, if the circumstances warrants.

7. In such view of the facts and circumstances of the case, this court does not find any perversity or illegality in the order passed by the Magistrate in Crl.M.P.No.882 of 2013. Therefore, this Criminal Original Petition is liable to be dismissed.

8. Now, it is stated that the case is pending before the learned Magistrate, No.II, Pollachi, in S.T.C.No.328 of 2016 and the C.C., is of the year 2008. Therefore, the learned Magistrate No.II, Pollachi, is directed to dispose of the case in accordance with law, within two months from the date of receipt of a copy of this order. With the above direction, this petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

9. The learned counsel for the petitioner and the respondent would submit that now Judicial Magistrate No.II, Pollachi, is vacant and there is no Presiding Officer. The Judicial Officer, who is incharge of the post, is directed to



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dispose of S.T.C.No.328 of 2016 [C.C.No.485 of 2008], in accordance with law, within the time specified above and file compliance report before this court.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I,
Pollachi.

2.The Judicial Magistrate No.II,
Pollachi.

3. -Do-Thro' The Chief Judicial Magistrate,
Coimbatore.

Copy to : 1.The Registrar (Judicial),
High Court of Madras, Chennai -104.

2.The Section Officer, Criminal Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.Sampath Kumar & Associates Sr.No. 1597

+1 cc to M/s.L.Mouli, Advocate Sr.No. 1444

AKM/08.01.2020/4P- 8C /

Cr1.O.P.No.7689 of 2013