BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

Crl.R.C(MD).No.278 of 2017

Sivaram ... Petitioner

Vs

Pathirakalimuthu ... Respondent

PRAYER: Petition filed under Section 397 r/w 401 of Code of Criminal Procedure, to call for the records and set aside the order passed in Cr.M.P.No.582 of 2017 in C.C.No.97 of 2016 on the file of the Fast track Court (Magisterial Level) Thoothukudi dated 24.01.2017 and allow this criminal revision petition.

For Petitioner : Mr.A.Anandan

For Respondent : Mr.V.Malaiyendran

ORDER

Head the learned counsel on either side.

2.The revision petitioner is the accused in C.C.No.97 of 2016 on the file of the Fast Track Court (Magisterial level), Thoothukudi. The said complaint had been filed by the respondent for the offence under Section 138 of the Negotiable Instrument Act. The accused filed Cr.M.P.No.582 of 2017 before the trial Magistrate for summoning the Income Tax officials. The said Miscellaneous Petition was dismissed vide order dated 24.01.2017. The same has been challenged in this revision case.

3.The learned counsel appearing for the revision petitioner reiterated all the contentions set out in the memorandum of grounds. He drew my attension to Section 243(2) Cr.PC.

4.Section 243(2) Cr.P.C reads as follows:

" *(2) If the accused, after he had entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue* *such process unless he considers that such application should be refused on the ground that it is made for hte purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing;*

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this Section, unless the Magistrate is satisfied that it is necessary for the ends of justice."

5.The learned counsel placed considerable emphasis on the expression "shall" occuring in the said provision. Though the contention of the learned counsel for a petitioner is persuasive and can be accepted in the normal course of events, I am of the view that considering the special facts and circumstances, the order impugned in the revision case deserves to be sustained. Section 243(2) Cr.P.C states that the learned trial Magistrate can deny the request of the defence, if he is of the view that it has been made for the purpose of vexation or delay. In the case on hand, the complainant had himself admitted that the transaction in question has not been reflected in the Income Tax returns. It is also seen that the accused has challenged the means of the complainant to advance the amount. Therefore, a burden is on the complainant to show that he had the requisite means. The complainant has filed only the photocopy of the Income Tax returns. I am of the view that by summoning the Income Tax officials, the defence of the accused would not be advanced in any manner. Therefore, the learned trial Magistrate was entirely justified in dismissing the petitioner's application. In fact, the dismissal of the application will not in any way affect the case of the defence. Therefore, leaving open the contention of the revision petitioner, the order impugned in the revision case is sustained and the Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

To

1. The Presiding Judge,
   Fast Track Court, (Magisterial Level) Thoothukudi.

2.-Do-thro'The Chief Judicial Magistrate,
Tuticorin District.

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