IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.07.2021
CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.No.8002 of 2016
and
Crl.M.P.No.4188 of 2016

Bharat Steel
a sole proprietorship concern of Mrs.Monica Goel
60/38, 1st Floor, Malayappan Street,
Mannady, chennai-1
Rep.by power agent Mr.Murugesan
S/o.Subburam
H Block, New No.13, Anna Nagar East,
Chennai – 102 ` ... Petitioner

Vs.

R.Karunasekar
Proprietor, Thirumalai Traders
486 A, CTH Road,
Thirunindravur
Chennai – 602 024 ...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to call for the records relating to the docket order passed by the Hon'ble Fast Track Court No.4 (Metropolitan Magistrate) George Town, Chennai, in C.C.No.4494 of 2013 dated 17.03.2016 and set aside the same and thereby direct the said Court to mark the admitted income tax return as exhibit.

For Petitioner : Mr.Sirajudeen, Senior Counsel for Mr.R.Rajamani
For Respondent : Served-Name Printed (NA)

O R D E R

(This case has been heard through video conference)

This Criminal Original Petition has been filed by the petitioner/ defacto complainant to set aside the docket order passed by the Fast Track Court IV (Metropolitan Magistrate) George Town, Chennai, in C.C.No.4494 of 2013 dated 17.03.2016 and to further direct the Court to mark the admitted Income Tax return as exhibit.

2. The case of the petitioner / defacto complainant is that the petitioner / defacto complainant had filed a private complaint under Section 138 of Negotiable Instruments Act before the Fast Track Court-IV (Metropolitan Magistrate) George Town, Chennai, against the respondent/accused for dishonouring the cheque issued by the him in favour of the

petitioner / defacto complainant. At the time of trial and cross examination of defence witness, the respondent / accused after getting permission of the Court, examined himself as witness and on 17.03.2016, at the time of cross examining the witness, the petitioner herein had filed a copy of Income Tax Returns filed by the respondent/accused and it was admitted by the respondent/accused and necessary statement was also recorded by the learned Magistrate. However, before marking the document, the learned Magistrate had asked for source from where the petitioner / defacto complainant got the copy of the Income Returns for which, it was stated that the Court need not go into the aspect of the source from where it was obtained and it is unwarranted in law and the petitioner/defacto complainant had refused to explain it. Thereby, the document could not be marked and the Court prevented the petitioner from proceeding with the matter further and posted the matter for continuation of cross examination on 06.04.2016 by docket order dated 17.03.2016. Hence, the present petition has been filed before this Court to set aside the same and to direct the court to admit the Income Tax Returns as Exhibit.

3. The learned Counsel for the petitioner/defacto complainant submits that when the witness himself has admitted that the said Income Tax Returns copy belongs to him, the Court need not go into the aspect of the source from where it was obtained. He would further submit that the contents of the income tax returns are the material evidence for the petitioner to prove his case for further cross examination. Hence, he prays to set aside the docket order passed by the Court below and to direct the said Court to admit the said document.

4. It is seen that the document filed by the petitioner/defacto complainant is the copy of Income Tax Returns of the respondent/accused. In the cross examination on 17.03.2016, the respondent/accused himself has admitted that he is filing the returns every year and the said document was for the Financial Year 2012 - 2013. The original has not been filed and only the Xerox copy has been filed by the complainant. Since there was no statement made by the petitioner/defacto complainant as to how he got the said document, the Court did not mark the same. Now in the docket order dated 17.03.2016, the same was reiterated that the Xerox copy as per Section 65 of the Indian Evidence Act, could not be taken as a secondary evidence and the petitioner has not given any explanation and hence, the document was not marked and then the matter adjourned for further hearing.

5. It is seen that the petitioner/defacto complainant himself has filed the said Income Tax Returns and the respondent/accused himself has admitted that it belongs to his account and the xerox copy was admitted. Therefore, the Court below can admit the same as Secondary evidence and the Court

need not go into the source of the said document. The accused himself agrees that it belongs to him, the Court may proceed further with the said document as secondary evidence in this case and dispose of the matter as expeditiously as possible.

6. Accordingly, the Criminal Original Petition is allowed. The docket order passed by the Fast Track Court IV (Metropolitan Magistrate) George Town, Chennai, in C.C.No.4494 of 2013 dated 17.03.2016 is set aside. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
The Fast Track Court-IV (Metropolitan Magistrate)
George Town, Chennai.

CRL.O.P.No.8002 of 2016 and
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(CO)
A.SK(06.08.2021)