IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.6176 of 2021
and Crl.MP No.4083 of 2021

Vadivel ... Petitioner

Vs.

Jaganatharao ... Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. To setaside the order dated 08.12.2020 passed in Crl.MP No.507 of 2020 in STC No.122 of 2018 on the file of the Fast Track at Magisterial Level, Vellore (Judicial Magistrate, Fast Track Court at Magisterial level, Vellore), vellore District.

For Petitioner : Mr.S.Silambuselvan

For Respondent : Mr.M.Mohammed Riyaz
Additional Public prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 91 of Cr.pc to direct the income tax officer to produce the income tax returns of the complainant from the year 2012 to 2019.

2. The petitioner is facing trial before the Court below under Section 138 of the Negotiable Instruments Act. This complaint was filed in the year 2018. The respondent who is the complainant was examined as PW1 and his Auditor was examined as PW2. Both these witnesses were cross examined by the petitioner. The petitioner filed an application under Section 91 of Cr.PC to direct the income tax officer to produce the income tax return of the respondent from the year 2012 - 2019. This application was dismissed by the Court below. Aggrieved by the same, the present petition has been filed before this Court.

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3. The learned counsel for the petitioner submitted that the respondent even during the cross examination has stated that he will always keep a sum of Rs.5 lakhs to 10 lakhs as cash in his hand. The learned counsel therefore submitted that this statement made by the respondent will have to be corroborated from the Income Tax returns filed by the respondent and the respondent has filed the income tax returns only for the year 2019. According to the respondent, the amount was borrowed by the petitioner in the year 2017 and unless, the income tax returns for the period prior to 2017 up to 2018 is marked the financial wherewithal of the respondent, to have lent such a huge amount to the petitioner cannot be proved. The learned counsel submitted it is for this reason that the petition under Section 91 of Cr.PC was filed before the Court below.

4. This Court has carefully considered the submission made by the learned counsel for the petitioner and also the order passed by the Court below.

5. In the considered view of this Court, this Court does not find any illegality or infirmity in the order passed by the Court below. The Court below has given cogent reasons as to why the application filed by the petitioner under Section 91 of Cr.PC cannot be entertained. The Court below has rightly come to a conclusion that the petitioner is only trying to fish out evidence. That apart, the petitioner has made an effort by calling upon the respondent to furnish the relevant income tax returns to prove his financial wherewithal. If the respondent does not choose to file the income tax returns for the relevant period, he cannot be compelled to produce those income tax returns and it will always be left open to the concerned Court to draw an inference on the conduct of the parties.

6. In view of the above, this Court does not find any ground to interfere with the order passed by the Court below and accordingly, this Criminal original petition is dismissed. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Fast Track at Magisterial Level, Vellore (Judicial Magistrate,
Fast Track Court at Magisterial level,
(Vellore), vellore District.

2. The Public Prosecutor,
Madras High Court,
Chennai.

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