IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2021

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.287 of 2021 in
Crl.M.P.No.5738 of 2021

Vishnu Priya Nahar
Prop.M/s.Vishnu Imports and Exports
No.16, Annex-2
Kamatchi Nagar
Mangadu
Chennai- 600 122 ...Petitioner/Accused

Vs.

Arjun Sharma
Son of R.Sampath Raj Sharma,
Prop. Shree Tripura Imports and Exports,
Residing at No: 65,
MMDA Colony,
Arumbakkam,
Chennai- 600 106. ...Respondent/Complainant

Prayer: Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C is praying to set aside the order of the learned XX Metropolitan Magistrate, Allikulam, at Chennai, in Crl.M.P.No.572/2021 in C.C.No.2528/2016, dated 08.04.2021.

For Petitioner : MR.A.T.Anbu Kumar
For Respondent : M/s.T.Thangadurai for
M/s.M.Jayaprakash

ORDER

The petitioner is accused and the respondent is complainant. The respondent had filed a private complaint against the petitioner for the offence under section 138 of Negotiable Instruments Act before the XX Metropolitan Magistrate, Allikulam, Chennai, the side complaint was taken on file in C.C.No.2528 of 2016. After the respondent side evidence are over and at the time of defence evidence, the petitioner filed Crl.M.P.No.572 of 2021 invoking section 243(2) Cr.P.C. seeking to examine the Income Tax Officer, Nungambakkam, Chennai, and to produce the status of certain declaration form regarding the income details of the complaint. The said petition was dismissed by the trial Court. Challenging the side order, the petitioner has filed the present revision before this Court.

2. The learned counsel for the petitioner/accused would submit earlier, the petitioner had filed a petition under Section 91 Cr.P.C. seeking the respondent/complainant to produce certain documents and the same was partly allowed and the relevant documents were also produced but, they were only self attested copies and the same are not authenticated documents. Therefore, during defence evidence, the petitioner has filed a petition under Section 243(2) of Cr.P.C before the trial Court to summon the Income Tax Officer to examine on his side as defence witness and to produce the declaration form regarding the income details of the respondent/complaint. But, the trial Court without considering the factual position, dismissed the same which warrants interference this Court. The trial Court has failed to consider the fact that only after examining the Income Tax Officer, the petitioner can establish his defence by preponderance of probabilities that he is not liable to pay any money and the cheque was not given for legally enforceable debt.

3. The learned Counsel for the respondent/complainant would submit that the case in C.C.No.2528 of 2016 was filed in the year 2016 and it was pending for about five years. Thereafter, on the petition filed by the petitioner invoking section 91 of Cr.P.C., the documents sought for by the petitioner were produced in the earlier stage. However, he did not take any steps and after completion of evidence of complainant, when the matter was posted for defence side evidence, in order to protract the trial, the petitioner filed the petition invoking Section 243(2) Cr.P.C. and the learned trial Magistrate has rightly considered the petition and dismissed the same, which does not call for any interference of this Court.

4. Heard the learned counsel for the petitioner and learned counsel for the respondent and perused the materials on record.

5. Admittedly the respondent filed a complaint against the petitioner under Section 138 of Negotiable Instruments Act in C.C.No.2528 of 2016 before the XX Metropolitan Magistrate, Allikulam, Chennai, and the case was pending from the year 2016. After the respondent side evidence are over and at the time of defence evidence, the petitioner filed Crl.M.P.No.572 of 2021 invoking section 243(2) Cr.P.C. seeking to examine the Income Tax Officer, Nungambakkam, Chennai, and to produce the filing status of certain declaration forms regarding the income details of the respondent/complainant. On earlier occasion also, the petitioner had filed a petition invoking Section 91 Cr.P.C. in which, the respondent/complainant had produced certain documents which was self attested. To decide the case, the said documents are enough and the Income Tax Officer need not be examined. Further, the case of this nature, examination of the Income Tax Officer is unnecessary. Therefore, the trial Court rightly found

that the examination of the Income Tax Officer is not necessary and the reasons stated by the petitioner is not sustainable and thereby, dismissed the same.

6. This Court does not find any perversity in the order passed by the learned Magistrate. There is no merit in the revision and the revision is liable to be dismissed.

7. Since the C.C.No.2528 of 2016 is pending from the year 2016 and already the complainant side evidence is over and it is only at the stage of defence side evidence, the learned XX Metropolitan Magistrate, Allikulam, Chennai, is directed to complete the proceedings and dispose the case within a period of two months from the date of receipt of copy of this order.

8. With the above directions, this Criminal Revision case is dismissed. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

dsn
To
The XX Metropolitan Magistrate,
Allikulam, Chennai

Copy to
The Section Officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.M. Jayaprakash, Advocate sr 51487.

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VSNII(CO)
SP(20/10/2021)