IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **16.12.2022**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.17294 of 2021
and
Crl.M.P No.9494 of 2021

B.Govindaraj ... Petitioner

Vs.

P.Kumaran ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to set aside the order passed by the learned XIX Metropolitan Magistrate, Allikulam, Chennai in CMP No.1592 of 2019 in C.C No.6080 of 2017 dated 15.11.2019.

For Petitioner : Mr.V.V.Sairam

For Respondent : Mr.S.Baskar

O R D E R

This Criminal Original Petition has been preferred, challenging the the order of the learned XIX Metropolitan Magistrate, Allikulam, Chennai in CMP No.1592 of 2019 in C.C No.6080 of 2017 dated 15.11.2019.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The petitioner is the complainant who has given the private complaint against the respondent/accused for the offence under Section 138 of Negotiable Instruments Act; after the trial was over, both the parties were examined; the respondent/accused has filed a petition under Section 91 Cr.P.C. seeking for production of certain documents and the said petition was allowed; aggrieved over that, the complainant had filed this criminal original petition.

4. The records would show that the respondent/accused filed a petition under Section 91 of Cr.P.C seeking for the documents pertaining to the Income Tax Assessment returns of the complainant for the assessment year 2006-2007 and 2007-2008. The respondent has filed the petition under Section 91 Cr.P.C by alleging that the complainant did not have any source of income to give the cheque amount and hence, the respondent is not liable to pay the same. Since the complainant had not produced his Income Tax returns for the relevant period, in order to show that he has sufficient income, the respondent has filed a petition to send for the returns.

5. Now, the learned counsel for the petitioner submitted that the respondent had admitted his signature and when there is no dispute with regard to the execution of the cheque, the presumption would go in favour of the complainant that the cheque has been issued for legally enforceable debt or liability as seen in the cheque; in order to rebut the initial presumption that is accrued in favour of the complainant, the respondent has to produce his own evidence. He cannot compel the petitioner to produce his Income Tax returns; however, he has not disputed the source of income at any point during the course of the trial; all of a sudden, after the defence side evidence was over, he has filed a petition just to drag the proceedings and harass the petitioner; it is further submitted that even if the Income Tax returns were not filed, there cannot be any reason to presume that the complainant did not have any source of income to support the cheque amount.

6. It is seen from the order of the trial Judge that the trial Judge had chosen to allow the petition for the reason that when PW1 was cross examined, he admitted that he is an Income Tax assessee and he used to file returns and he has no objection to file the same. Later, PW1 has stated that he is unable to trace the document and if required, the accused can approach the Income Tax department for production of the same. When the complainant enjoys the statutory presumption in his favour, the respondent/accused has got a duty to rebut the initial presumption. Rebuttal proof need not necessarily be the direct evidence of the respondent that the evidence on record would bring before the Court. In the case in hand, the complainant who was examined as PW1 has stated in his evidence that he is an Income Tax assessee and he has filed his returns regularly and when he was asked to produce the returns, he stated that he did not have the same and if the respondent wanted he could approach the Income Tax authorities and get the same.

7. The specific contention of the learned counsel for the petitioner is that it is not a land or some other transaction between the petitioner and the respondent; but the amount involved in the cheque is the partial sale consideration paid by the complainant to the respondent towards an agreement with regard to the purchase of a property. Since the sale need not be fructified, the respondent had given back the advance amount by way of cheque and when the same was presented for collection, it was dishonoured due to insufficient funds. Before adverting into the source of income, it is also essential to look into the nature of the transaction alleged between the parties.

8. It is relevant to refer the judgment of the Hon'ble Supreme Court in the case of **P.Rasiya vs. Abdul Nazer** in Criminal Appeal Nos.1233-1235 of 2022 dated 12.08.2022, wherein it is held that the non-production of Income Tax returns alone will not give a presumption with regard to the source of income. Even by some remote imagination without the Income Tax returns, the petitioner cannot prove his source of income. If the petitioner takes the risks of not producing the returns as stated by him in the evidence, it is always open to the Court to take presumption with regard to withholding the best evidence.

9. In the result, this Criminal Original Petition is allowed and the order of the learned XIX Metropolitan Magistrate, Allikulam, Chennai made in CMP No.1592 of 2019 in C.C No.6080 of 2017 dated 15.11.2019 is set aside. Consequently, connected Miscellaneous Petition is closed.

16.12.2022

Index : Yes/No
Speaking Order : Yes / No
uma

To

The XIX Metropolitan Magistrate,
Allikulam,
Chennai

R.N.MANJULA.,J
uma

Crl.O.P No.17294 of 2021
and
Crl.M.P No.9494 of 2021

16.12.2022