IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2022

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.No.27747 of 2022
and
Crl.M.P.No.17059 of 2022

Mr. Bhojanapalli Koteswara Rao ... Petitioner

/vs/

Mr. Ne rella Sathya Narayana ... Respondent

Prayer : The Criminal Original Petition has been filed under Section 482 Cr.P.C. to call for the records in Crl.M.P.No.9789 of 2022 in C.C.No.3901 of 2016 on the file of Metropolitan Magistrate, Fast Track Court-III (FAC), Saidapet, Chennai-15 and set aside the order passed in Crl.M.P.No.9789 of 2022, dated 20.07.2022.

For Petitioner ... Mr. P. Udayakumar

ORDER

This Criminal Original Petition has been filed to call for the records in Crl.M.PNo.9789 of 2022 in C.C.No.3901 of 2016 on the file of Metropolitan Magistrate, Fast Track Court-III (FAC), Saidapet, Chennai-

15 and set aside the order passed in Crl.M.P.No.9798 of 2022, dated 20.07.2022.

2. The learned counsel for the petitioner submitted that the petitioner was facing trial in C.C.No.3901 of 2016 pending on the file of learned Metropolitan Magistrate, Fast Track Court-III (FAC), Saidapet, Chennai based on the complaint given by the respondent/defacto complainant against the petitioner for having committed an offence punishable under section 138 of Negotiable Instruments Act. In the above case, the petitioner filed an application in C.M.P.No.9789 of 2022 to call for the income tax return of the respondent pertaining to years from 2008 to 2013 from the Income Tax Department. The learned Magistrate dismissed the same on the ground that since the disputed cheque is pertaining to the year 2012 and the alleged transactions covered under Ex.A.6-Income Tax Returns relating to AY 2010 to 2013 filed by the respondent as exhibit in C.C.No.3901 of 2016 is presumed to be genuine document, it is not necessary to compare the income tax return verification form with the original which is in the custody of the income tax

department. He would further submit that the cheque was issued by the petitioner in the year 2007, whereas, it was mentioned in the complaint that the cheque was issued to the respondent on 1.11.2012. Apart from this, during the relevant period from 2008 to 2013, the income derived by the respondent is very meagre and he has no capacity to lend loan to any one. But the learned Judge having failed to consider and ascertain the income of the respondent, has passed the impugned order dismissing the petition to call for the income tax return of the respondent pertaining to AYs 2008 to 2013. Hence he prayed to set aside the impugned order and quash the same.

3. Heard the submissions of the learned counsel appearing for the petitioner and perused the documents and materials available on record.

4. On perusal of the records, it would reveal that the petitioner is an accused in C.C.No.3901 of 2016 on the file of Metropolitan Magistrate, Fast Track Court-III (FAC), Saidapet, Chennai. The petitioner is

prosecuted by the respondent/ defacto complainant for having committed the offence punishable under section 138 of Negotiable Instruments Act in C.C.No.3901 of 2016 for dishonouring of cheque dated 1.11.2012 issued by the petitioner in favour of him. The petitioner filed an application in Crl.M.P.No.9789 of 2022 in C.C.No.3901 of 2016 to send for income tax particulars of the complainant pertaining to the years 2008 to 2010 for better appreciation of truthfulness of document and the same was dismissed by the trial Court by impugned order dated 20.7.2022.

5. Further perusal of records would reveal that during the examination of witnesses, the complainant filed income tax return particulars for the year 2010 to 2013 which was marked as Ex.P.6. It is to be noted that the cheque was alleged to be issued on 1.11.2012. Further the allegation in the complaint is that the petitioner received a sum of Rs.4,10,000/- from the complainant on 27.12.2010 and for the purpose of repaying the amount, the petitioner gave a cheque dated 1.11.2012. In the circumstances, the complainant filed an application to call for the income tax particulars for the period from 2010 to 2013. Under these

circumstances, calling for income tax particulars for that period from 2008-2013 is unwarranted.

6. In view of the above, the trial court has rightly dismissed the said petition. There is no merits in this petition, therefore I find no reason to interfere with the order passed by the learned trial court. Hence, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

14.11.2022

Index : Yes/No
Internet : Yes/No
msr

To

The Metropolitan Magistrate,
Fast Track Court-III (FAC), Saidapet,
Chennai-15

V.SIVAGNANAM ,J.

msr

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