**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-24653 of 2022(O&M)
Date of Decision:- 01.06.2022

Akhil Bansal

….Petitioner

Vs.

Suresh Kumar Mittal

….Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. A.S. Salar, Advocate
for the petitioner.

KARAMJIT SINGH, J.(Oral)

CRM No.20821-2022

Allowed, as prayed for, subject to all just exceptions.

CRM-M-24653-2022

Petitioner has filed the present petition seeking quashing of order dated 25.04.2022, Annexure P-10, passed by the Court of Judicial Magistrate 1st Class, Chandigarh, whereby the application filed by the petitioner for summoning an official of the Income Tax Department in complaint case having No.NACT-9837-2019 dated 08.08.2019 under Section 138 of Negotiable Instruments Act, has been dismissed.

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The counsel for the petitioner contends that respondent has filed complaint under Section 138 of N.I. Act, in which petitioner has been summoned. That during cross-examination of complainant dated 25.04.2022, the complainant produced front overleaf page of his income tax returns for the assessment year 2014-15, 2015-16, 2016-17 and 2017-18 which were marked as DX1/CW1 to mark DX4/CW1. The counsel further contends that the complainant admitted that the aforesaid overleaf pages of income tax returns are not accompanied with computation sheets for the corresponding assessment years. That the witness when asked to produce the complete income tax returns, clearly stated that he cannot produce the computation sheets relating to aforesaid income tax returns and he also refused to produce income tax return or front overleaf page of income tax return for the assessment year 2018-19. The counsel further contends that in these circumstances there was no other choice with the petitioner except to move an application to summon the official of income tax department along with the record relating to income tax returns of the complainant for aforestated assessment years, so as to confront the complainant with the same. That accordingly, application Annexure P-9, dated 25.04.2022 was filed by the petitioner but the trial Court dismissed the same vide impugned order Annexure P-10, of the same date. The counsel further contends that the impugned order is totally illegal and has prejudiced the rights of the petitioner to establish his defence. The counsel for the

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petitioner while concluding his submissions, made prayer that the impugned order deserves to be set aside.

I have considered the submissions made by counsel for the petitioner and is of the view that the present petition can be disposed of at this very stage without issuing notice to the respondent, for the reasons stated herein below.

Admittedly, in the aforesaid criminal complaint filed under Section 138 N.I. Act, during the cross-examination of the complainant, he produced overleaf pages of his income tax returns for the assessment year 2014-15 to 2017-18 but failed to produce computation sheets for the aforesaid years and when being asked to produce the same he showed his inability to produce the said computation sheets in the Court and when he was asked to bring income tax return for the assessment year 2018-19 he again stated that he cannot bring the same.

In these circumstances, this Court is of the view that only option available with the petitioner was to summon the original income tax returns of the petitioner for the relevant period from the office of Income Tax Department through its official, in order to confront the complainant with the said documents. So the petitioner rightly moved an application Annexure P-9, but the same was declined by the trial Court without appreciating the aforementioned difficulty being faced by the petitioner in confronting the complainant with original income tax record.

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In view of the matter, the present petition is hereby allowed and the impugned order dated 25.04.2022 passed by Court of JMIC, Chandigarh, is set aside and application Annexure P-9 stands allowed and trial Court should accordingly summon the concerned official of Income Tax Department along with concerned record for the purpose detailed in the application itself.

In case the respondent feels any prejudice on account of the present order, he is at liberty to approach this Court for redressal of his grievance. The petitioner is directed to appear before the Trial Court on the next date fixed in the trial.

Disposed of accordingly, so also the pending miscellaneous application(s), if any.

(KARAMJIT SINGH)
JUDGE

01.06.2022
P. Chawla

Whether reasoned / speaking? Yes / No
Whether reportable? Yes / No

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