**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 28.02.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN**

**Crl.O.P.Nos.4206 & 3260 of 2023**
**&**
**Crl.M.P.No.1955 of 2023**

S.P.Mahavir ... Petitioner in both Crl.O.P.'s

/vs/

D.Sivakumar ...Respondent in both Crl.O.P.'s

**Prayer in Crl.O.P.No.4206 of 2023:** Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the order and records in C.M.P.No.2741 of 2022 in C.C.No.278 of 2018 and set aside the order dated 12.12.2022, passed by the Learned Judicial Magistrate Fast Track Court No.1, Coimbatore.

**Prayer in Crl.O.P.No.3260 of 2023:** Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the order and records in C.M.P.No.2740 of 2022 in C.C.No.278 of 2018 and set aside the order dated 12.12.2022, passed by the Learned Judicial Magistrate Fast Track Court No.1, Coimbatore.

In both Crl.O.P.'s
For Petitioner ... Mr.K.Selvakumar

For Respondent ... -

**COMMON ORDER**

These Criminal Original Petitions have been filed to call for the order and records in C.M.P.Nos.2740 & 2741 of 2022 in C.C.No.278 of 2018 and set aside the order dated 12.12.2022, passed by the Learned Judicial Magistrate Fast Track Court No.1, Coimbatore.

2. Learned counsel for the petitioner submitted that petitioner filed C.M.P.Nos.2740 & 2741 of 2022 in C.C.No.278 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court No.1, Coimbatore for the purpose of reopening petitioner's case and for recalling of PW1 for the producing 2 more documents. These petitions came to be dismissed by the learned Judicial Magistrate, Fast Track Court No.1, Coimbatore. Challenging the dismissal of these petitions, these Criminal Original Petitions are filed.

3. It is submitted by the learned counsel for the petitioner that petitioner has recorded loan transaction with the respondent/accused in his balance sheet for the year 2015-2016. It is reflected in the loan and

advance statement, balance sheet and also in the profit and loss account of the petitioner. Unless these documents are permitted to be produced, petitioner would not be in a position to prove his case. Without considering the petitioner's rightful claim, both the petitions filed for reopening the case and for recall of PW1 was dismissed, necessitating filing of these petitions.

4. It is seen from the order of the learned Judicial Magistrate, Fast Track Court No.1, Coimbatore that petitions for reopening the case of the petitioner and for recalling PW1 was filed, when the matter was pending for arguments. On behalf of the petitioner, PW1 & PW2 were examined and on the other side DW1 & DW2 were examined. DW1 was the Assistant Manager of the Bank of India and DW2 was the Inspector of income-tax Department. DW2 deposed that the petitioner is an income-tax assessee as per PAN No.AJBPM8487F. He also produced the income-tax returns of the petitioner for the assessment year 2015-2016, 2016-2017 and they were marked as Ex.D4 and Ex.D5. The order further reads that only after examination of DW2, the documents now sought to be produced are produced by the petitioner stating that it was prepared by the Chartered Accountant, VMG Associates. These balance sheets were not duly

acknowledged by the Income-Tax Department. Thus, the learned Judicial Magistrate, Fast Track Court No.1, Coimbatore was of the view that documents sought to be produced were not duly prepared during the year 2016-2017 and prepared only after examination of DW2. Thus, finding that the documents are sought to be produced only with a view to fill up the lacuna, the learned Judicial Magistrate, Fast Track Court No.1, Coimbatore dismissed the petition.

5. This Court, on going through the documents, records and order of the learned Judicial Magistrate, Fast Track Court No.1, Coimbatore finds that when the documents sought to be produced are not produced before the income-tax or other tax authorities and got authenticated, no purpose would be served by producing these documents now especially after examination of DW2. As expressed by the learned Judicial Magistrate, Fast Track Court No.1, Coimbatore, it appears that these documents are prepared only for the purpose of strengthening the case of the petitioner, which in the absence of any validation by the tax authorities cannot be permitted to be received as an evidence.

6. In this view of the matter, this Court finds no reasons to take a

different view of the matter than the view taken by the learned Judicial Magistrate, Fast Track Court No.1, Coimbatore.

7. Accordingly, these Criminal Original Petitions are dismissed by confirming the orders of the learned Judicial Magistrate, Fast Track Court No.1, Coimbatore in C.M.P.Nos.2740 & 2741 of 2022 in C.C.No.278 of 2018 dated 12.12.2022. Consequently, connected miscellaneous petition is closed.

**28.02.2023**

Index: Yes/No
Internet: Yes/No
Speaking/Non speaking order

mpl

**G.CHANDRASEKHARAN, J.**

mpl

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