



Crl.O.P.No.2885 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM :

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

**Crl.O.P.No.2885 of 2023
and Crl.M.P.No.1696 of 2023**

M.G.Velu

.. Petitioner

Versus

M.Arvind Bagrecha

.. Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order, dated 20.01.2023 passed by the learned Metropolitan Magistrate, Fast Track Court No.1, Allikulam, Egmore, Chennai in Crl.M.P.No.31354 of 2022 in C.C.No.1599 of 2019.

For Petitioner : Mr.K.S.Murugan

For Respondent : Mr.P.N.Vignesh

ORDER

This petition has been filed seeking to set aside the order passed in Crl.M.P.No.31354 of 2022 in C.C.No.1599 of 2019 on the file of the learned Metropolitan Magistrate, Fast Track Court No.I, Allikulam, Egmore, Chennai.



Crl.O.P.No.2885 of 2023

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2. The respondent has filed a private complaint against the petitioner for offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I.Act'). The case was at the stage of trial and the petitioner filed an application under Section 91 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.,') to direct the respondent to furnish documents mentioned in the schedule to the application. The said application came to be dismissed by the Court below by an order, dated 20.01.2023. Aggrieved by the same, the present petition has been filed before this Court.

3. Heard Mr.K.S.Murugan, learned Counsel for the petitioner and Mr.P.N.Vignesh, learned Counsel for the respondent.

4. The main ground that was raised by the learned Counsel for the petitioner is that the respondent during the course of cross-examination had specifically admitted that the documents that have been specified in the schedule to the application are available with him and therefore, the petitioner had asked for the copies of those documents in order to establish his defence. In view of the same, it was contended that the respondent must



Crl.O.P.No.2885 of 2023

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either produce those documents or an adverse inference has to be drawn against the respondent. The learned Counsel submitted that in view of the reverse burden cast upon under Section 139 of the N.I.Act, the petitioner has to necessarily discharge the said burden and it cannot be done without the documents that have been sought for by the petitioner.

5. Per *contra*, the learned Counsel for the respondent submitted that Serial Nos.3 to 5 of the schedule is a mere repetition of the same set of documents and whatever was available with the respondent has already been filed before the Court. Insofar as Serial No.1 in the schedule is concerned, the respondent has filed the income-tax returns with the acknowledgment. With respect to Serial No.2 in the schedule, the learned Counsel for the respondent submitted that it is voluminous and hence the balance sheet along with the summary of the note prepared by the Auditor will be furnished to the petitioner for the years 2016-2019.

6. In the considered view of this Court, the petitioner is questioning the financial wherewithal of the respondent and according to the petitioner, the respondent did not possess funds to enable him to lend a sum of



Crl.O.P.No.2885 of 2023

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Rs.25,00,000/- to the petitioner. Hence, the petitioner has put sufficient questions to the respondent during the cross-examination in this regard.

During the course of cross-examination, the respondent has admitted that he is in possession of the documents sought for by the petitioner. There are five sets of documents sought for by the petitioner and which has been described in the schedule to the application filed under Section 91 of Cr.P.C. Insofar as Serial Nos.3 to 5 are concerned, the learned Counsel for the respondent submitted that whatever was available with the respondent has already been furnished to the petitioner. Similarly with respect to Serial No.1, the income-tax returns with the acknowledgment for the years 2016-2017 to 2018-2019 have been furnished to the petitioner. What remains is Serial No.2 which pertains to the Audited balance sheet of the respondent for the years 2016-2019. According to the learned Counsel for the petitioner, it is this balance sheet which will contain the particulars regarding the so-called loan that was given to the petitioner during the relevant point of time. This balance sheet will also reflect the financial capability of the respondent.



Crl.O.P.No.2885 of 2023

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7. The learned Counsel for the respondent submitted that the balance sheet and the summary note of the Auditor for the years 2016-2019 will be furnished to the petitioner. The same shall be furnished to the petitioner within a period of two weeks from today.

8. The Court below shall proceed further with the case and C.C.No.1599 of 2019 shall be disposed off by the Court below within a period of three months from the date of receipt of a copy of this order.

9. This Criminal Original Petition is disposed off with the above directions. Consequently, connected miscellaneous petition is closed.

14.07.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

The Metropolitan Magistrate,
Fast Track Court No.1, Allikulam,
Egmore, Chennai.



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Crl.O.P.No.2885 of 2023



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Crl.O.P.No.2885 of 2023

N.ANAND VENKATESH, J.

grs

Crl.O.P.No.2885 of 2023
and Crl.M.P.No.1696 of 2023

14.07.2023