IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P Nos. 15887 and 16082 of 2023
and Crl.M.P.No.10113 of 2023

R.Santhanam
S/o.Ramsamy Gounder ... Petitioner in both Crl.OPs.

vs.

M.S.Anthoni,
S/o.Muthappan ... Respondent in both Crl.OPs.

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 02.06.2023 made in Crl.M.P.Nos.4964 and 4965 of 2022 in S.T.C.No.72/2018 on the file of the Learned Judicial Magistrate (Fast Track)Court, Tiruppur.

For Petitioner : Mr.P.M.Duraiswamy

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COMMON ORDER

These criminal original petitions have been filed against the order passed by the Court below dismissing the applications filed under Sections 91 and 311 of Cr.P.C

2. The respondent filed a complaint against the petitioner for the offence

under Section 138 of the Negotiable Instruments Act, 1881.

3. The respondent was examined as P.W.1 and he was cross-examined on the side of the petitioner in detail. The main defence that has been taken by the petitioner is that the entire transaction claimed is false and that the respondent does not have any financial wherewithal to lend the money as claimed by him. During the cross-examination, relevant questions were put to the respondent and the respondent was also asked as to whether he will be able to furnish the relevant income tax returns and the accounts maintained for the receipts and payments during the relevant point of time.

4. The respondent replied saying that he will be able to produce the same. The respondent did not produce any income tax returns and the account particulars and hence, the petitioner filed two applications. One application was under Section 91 of Cr.P.C., to direct the respondent to furnish the income tax returns for the period from 2012 to 2016 and also to furnish the bank account maintained by the petitioner in the Catholic Syrian Bank from 2014 to 2016. The other application filed was to recall P.W.1 for further cross-examination based on the documents that were sought for from the respondent.

5. Both the applications came to be dismissed by the Court below by an

order dated 02.06.2023. Aggrieved over the same, these criminal original petitions have been filed.

6. This Court heard the learned counsel for the petitioner and also carefully perused the materials available on record.

7. The petitioner wants to establish his defence that the respondent does not have any financial wherewithal to lend the money as claimed by him. For that purpose, the petitioner has questioned the respondent during the cross-examination and also specifically asked the respondent as to whether he will be above to furnish the income tax/returns and also the bank account particulars and the respondent has replied that he will be able to furnish the same. However, the respondent did not furnish any documents. Therefore, the petitioner had taken steps to get those documents from the respondent and also question the respondent in that regard. The respondent has once again resisted those applications. The Court below has dismissed the applications filed by the petitioner.

8. If ultimately, the respondent does not furnish the documents in spite of the efforts taken by the petitioner, the petitioner has to only raise the ground of

adverse inference before the Court below and argue his case. The petitioner can only take efforts to get the relevant documents and nobody can force the respondent to produce those documents. If ultimately, the respondent does not want to produce those documents, it is always open to the petitioner to argue his by the taking the ground of adverse inference. Except giving this clarity, no further orders can be passed in these criminal original petitions.

In view of the above, both the criminal original petitions are disposed of with a direction to the Court below to dispose the case in S.T.C.No.72 of 2016 within a period of two(2) months from the date of receipt of a copy of this order. Connected miscellaneous petition is closed.

27.07.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
mp/mkn

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mp/mkn

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