IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.17727 of 2023

A.Narayanan .. Petitioner

Vs.

Mr.Praful H.Bhandari ..Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed by the learned Metropolitan Magistrate, Fast Track Court -II, Egmore at Allikulam in Crl.M.P.No.23005 of 2023 dated 12.07.2023 in C.C.No.6883 of 2017.

For Petitioner : Mr.R.Dhamodaran

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 91 of Cr.P.C., in Crl.M.P.No.23005 of 2023, dated 12.07.2023.

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

Section 138 of the Negotiable Instruments Act. The respondent was examined as PW1 and he has also been cross-examined by the petitioner. According to the petitioner, the respondent does not have the wherewithal to lend a sum of Rs.4,00,000/- to the petitioner and hence, the petitioner wanted to prove the same. Hence, an application was filed under Section 91 of Cr.P.C., for a direction to the respondent to furnish the income tax returns for the financial year 2014-2015 and also the relevant ledger folio extracts showing the loan transaction. This application came to be dismissed by the Court blow by order dated 12.07.2023. Aggrieved by the same, the present criminal original petition has been filed before this Court.

3.This Court has carefully considered the submissions made by the learned counsel for the petitioner and the materials available on record.

4.The learned counsel for the petitioner submitted that during cross-examination, PW1 has admitted that he is an income tax assesse and that he has maintained the relevant accounts for the relevant period. In view of this stand taken by the respondent in cross-examination, the petitioner had filed an application under Section 91 of Cr.P.C., to direct the respondent to furnish those documents.

The learned counsel submitted that those documents are very much required in order to substantiate the defense of the petitioner.

5.In the considered view of this Court, the respondent has taken a very specific stand in the counter filed to the application that the amount was paid in cash to the petitioner and he has not mentioned about this transaction in the income tax returns or in any other books of accounts. In the light of this stand taken by the respondent, no useful purpose will be served in asking him to furnish the relevant documents. If the petitioner has already put sufficient questions to the respondent at the time of cross-examination and has elicited some answers and the respondent is refusing to produce the relevant documents, it will always be left open to the petitioner to argue his case before the Court below by resorting to Section 114 of the Evidence Act for drawing adverse inference. It will always be left open to the Court below to consider the same and render findings. Except giving this clarity, this Court does not find any illegality or infirmity in the order passed by the Court below warranting the interference of this Court.

N.ANAND VENKATESH, J

ssr

6.This criminal original petition is disposed of with in the above terms.

08.08.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To
1.The Metropolitan Magistrate, Fast Track Court -II, Egmore, Allikulam.

2.The Public Prosecutor
High Court of Madras,
Madras.

Crl.O.P.No.17727 of 2023