



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.19715 of 2023

K.S.Ramamoorthy

...Petitioner/Accused

vs.

S.C.Shanavas

....Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and to set aside the order passed by the learned Fast Track Judge No.II, Metropolitan Magisterial Level, Egmore @ Allikukam, Chennai dated 04.07.2023 in Crl. Mp.No.14201 of 2023 in C.C.No.9397 of 2018.

For Petitioner : Mr.M.Anbalagan

For Respondent : Mr. A. Damodaran,

Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the learned Fast Track Judge No.II, Metropolitan Magisterial Level, Egmore, dismissing the application filed under



section 91 Cr.P.C. in Crl.M.P.No.14201 of 2023 dated 04.07.2023.

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2. The respondent has filed a complaint against the petitioner for offence under Section 138 of the Negotiable Instruments Act. The respondent examined himself as PW1 and he was also cross examined on the side of the petitioner. The main defence that was taken by the petitioner is that he has already repaid back the entire amount that was actually received by the petitioner and that the cheque which was given as security has been misused. In the course of cross examination, PW1 was specifically asked as to whether he is a Income Tax assessee and whether he has filed the returns showing the receipts and payments made by him. The respondent answered that he has filed the returns and he will be able to produce the same before the Court. The petitioner wanted the respondent to produce the returns pertaining to the years 2014-2015, 2015-2016 and accordingly, an application was filed under section 91 of Cr.P.C for directing the respondent to furnish these documents.



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3. The respondent contested this application and took a stand that the application has been filed only to drag on with the proceedings.

4. The Court below has dismissed the application filed by the petitioner and while doing so, the Court below has made certain observations which has actually prejudiced the defense that has taken by the petitioner. Aggrieved by the same, the present petition has been filed before this Court.

5. Heard Mr.M.Anbalagan, learned counsel for the petitioner and carefully perused the materials available on record.

6. The petitioner has filed the application under section 91 of Cr.P.C. to direct the respondent/complainant to produce the Income Tax returns pertaining to the years 2014-2015 and 2015-2016, based on the statement made by PW1 during cross



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examination to the effect that he has the returns and that he will be able to produce the same before the Court. However, when the application was filed to produce those documents, the respondent has contested the same and thereby, he is not willing to produce those documents.

7. In view of the above, there is no question of compelling the respondent to produce the Income Tax returns. If the documents that have been sought for by the petitioner will enable the petitioner to substantiate his defense and the respondent is refusing to produce the same, it is always left open to the petitioner to raise the plea of adverse inference under Section 114(g) of the Indian Evidence Act.

8. The observation made by the Court below on the merits of the case are unwarranted and the Court need not have taken note of the defence taken by the petitioner at that stage. In view of the same, the observations made in the order passed in



Crl.MP.No 14201 of 2023 shall not be put against the petitioner.

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The petitioner will be permitted to argue on the issue of adverse inference and it is left open to the Court below to consider the same on the totality of the facts and circumstances of the case. This clarity will sufficiently take care of the interest of the petitioner.

9. This Criminal Original Petition is disposed of in the above terms and there shall be direction to the Court below to complete the proceedings in C.C.No.9397 of 2018 within a period of three months from the date of receipt of a copy of this order.

31.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
rka/vca



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To

1. The Fast Track Judge No.II, Metropolitan Magisterial Level, Egmore.
2. The Public Prosecutor, High Court, Madras.



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7

N. ANAND VENKATESH, J.
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Crl.O.P No.19715 of 2023

31.08.2023