IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.11.2023

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.23756 of 2023
and
Crl.M.P.No.16498 of 2023

1.M/s.Rishs International School
Represented by its Chairman,
N.Sakthivelu,
Having office at No.16/2A,
Kundrathur Main Road,
Murugan Nagar, Mangadu,
Chennai-600 122

2.Mr.N.Sakthivelu,
Chairman
M/s.Rishs International School
No.16/2A, Kundrathur Main Road,
Murugan Nagar, Mangadu,
Chennai-600 122 ... Petitioners

-vs-

C.M.Babu ...Respondent

PRAYER : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the entire records pertaining to the order passed in Crl.M.P.No.29816 of 2023 in S.T.C.No.3066 of 2023 on the file of the learned Metropolitan Magistrate, Fast Track Court-I, Egmore at Allikulam, Chennai and set aside the same.

For Petitioners : Mr.R.Natarajan
for M/S.G.Bhalakumaran

ORDER

Pending trial of the private complaint under Section 138 of Negotiable Instruments Act in STC.No.3066 of 2023 on the file of Metropolitan Magistrate, Fast Track Court-I, Egmore at Allikulam, Chennai, the accused have taken out an application under Section 91 of Cr.P.C for production of income tax returns of the complainant for the financial year 2019-2020 corresponding assessment year 2020-2021 or in alternate to direct the complainant to furnish his PAN number and based on the PAN number, to direct the Commissioner of Income Tax to produce the income tax returns of CMB Traders which is the complainant for the relevant financial year.

2. This petition was filed after examination of complainant as P.W1. The Trial Court had considered the prayer in the petition and the objection and had dismissed the petition recording that the documents summoned are not necessary and if the petition is allowed, the complainant will suffer a lot and it would not be compensated in terms of money. Challenging both the reasons as

improper, unjust and against the principle of fair hearing of affording due opportunity to the accused, the present petition is filed by the accused.

3. This Court perused the records. Heard the learned counsel for the petitioners. The need for the petition to summon the income tax returns to be produced by the complainant himself from the department has emanated due to certain response elicited during the course of cross-examining the complainant. Therefore, the prayer to summon to produce those documents under Section 91 of Cr.P.C cannot be rejected saying they are not required for the decision in the case. Similarly, by allowing the application, the complainant cannot claim that he will be put to hardship and it cannot be compensated in terms of money. It is to be take note that the offence under Section 138 of Negotiable Instruments Act carries a reverse burden and presumption against the accused. Therefore, the accused to be given due opportunity to discharge the burden to probablise that he is not guilty.

4. In the course of hearing of this petition, the learned counsel for the petitioners submitted that there was financial transaction between the complainant and the accused/petitioners. For the loan availed, cheque was

given as security that cheque been misused. In fact, the accused, towards his liability to pay a sum of Rs.21,56,250/-, had already paid a sum of Rs.17,45,000/- and less than Rs.5,00,000/- alone he is liable to pay to the complainant.

5. Therefore, in view of the said admission this Court to confirm the bonafide whether the petitioners have resorted to Section 91 of Cr.P.C directed the petitioners to pay the admitted liability of Rs.5,00,000/- to the complainant and proceed further in the case.

6. Accordingly, today (24.11.2023), the petitioners/accused have produced a demand draft from Indian Bank dated 06.11.2023 drawn in favour of the one C.M.Babu/ complainant for a sum of Rs.5,00,000/- .

7. In view of the above facts, the petition is allowed. The order passed by the Trial Court dated 30.08.2023 is set aside. The Trial Court shall receive the demand draft of Rs.5,00,000/- payable to the complainant and hand over the same to the complainant and take note of the fact while deciding the case.

8. As far as the application under Section 91 of Cr.P.C, the same stands

allowed. The complainant either on his own to produce the documents summoned or in case of failure, the Trial Court shall cause summons to the Income Tax authority for production of the same. This process shall be completed within a period of 45 days from the date of receipt of a copy of this order.

9. With the above observations, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

24.11.2023

Internet : Yes/No
Index : Yes/No
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To

The Metropolitan Magistrate, Fast Track Court-I,
Egmore, Allikulam, Chennai

Dr.G.JAYACHANDRAN, J.

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