IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.01.2023**

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THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.32064 of 2022
and Crl.M.P.No.19703 of 2022

G.Ramalingam ...Petitioner

Vs.

K.Shanmugam ... Respondent

PRAYER: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to set aside the order passed in Crl.M.P.No.932 of 2019 in CC.No.218 of 2015, dated 06.05.2022 by the learned Judicial Magistrate, Rasipuram and consequently allow the same on the file of the learned Judicial Magistrate, Rasipuram.

For Petitioner : Mr.S.Manoharan
For Respondent : No appearance

O R D E R

This Criminal Original Petition has been filed to set aside the order passed in Crl.M.P.No.932 of 2019 in CC.No.218 of 2015, dated 06.05.2022 by the learned Judicial Magistrate, Rasipuram and consequently allow the same on the file of the learned Judicial Magistrate, Rasipuram.

2.The learned counsel for the petitioner submitted that petitioner filed Crl.M.P.No.932 of 2022 in C.C.No.218 of 2015 under Section 91 of Cr.P.C. for summoning six documents. The respondent objected to this petition on the ground that only the petitioner's father was a partner in Palaniyandavar finance and the son of the petitioner was partner in Sri Venkatachalapathy finance. All the documents sought to be produced by the respondent would be only available with them and respondent is not in possession of those documents. He further submitted that he produced income tax returns for the period 2016-2017, 2017-2018 and 2018-2019 and the income tax returns of two finances for the years 2008-2009, 2009-2010 and 2010-2011. The learned trial Judge had dismissed the petition. Challenging the said dismissal order, this petition is filed.

3.This Court on hearing the submission of the learned counsel for the petitioner and the perusal of the order finds that the respondent claims that he is not in possession of any of the documents asked for the petitioner with regard to two finances. When the respondent claims that he is not in possession of the documents, the Court can noway insist the petitioner to produce the documents. It is submitted by the learned counsel for the petitioner that the income tax returns produced by the respondent are of no use to the petitioner for the reason that they do not relate to the transaction concerned in this case.

4.If that be the case, it is open to the petitioner to summon the concerned Income Tax Officer to produce the relevant income tax details of the petitioner and the finances. As already indicated, when the respondent claims that he is not in possession of the documents claimed, only two courses are available. They are i)an adverse inference can be drawn against the respondent and ii) to take steps for summoning the documents from the person in whose possession the documents are available, through the process of Court.

5.Accordingly, this Criminal Original Petition is disposed. Consequently, connected miscellaneous petition is closed. It is open to the petitioner to take appropriate steps for summoning the documents from the concerned, if he finds it necessary.

02.01.2023

Index : Yes / No
Speaking / Non Speaking order
ep

G.CHANDRASEKHARAN,J.

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