IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.02.2024

CORAM:

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

Crl.O.P.No.1549 of 2024

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 ...Petitioners.

Versus

C.M.Babu ...Respondent.

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 10.01.2024 in Crl.M.P.No.59136 of 2023 in S.T.C.No.3066 of 2023 on the file of the Metropolitan Magistrate, Fast Track Court-I, Allikulam, Egmore.

For petitioners	:	Mr.C.Bhalakumaran
For respondent	:	Mr.R.Ganesh Kuamar

O R D E R

This Criminal Original Petition has been filed challenging the order passed by the Metropolitan Magistrate, Fast Track Court – I, Allikularm, Egmore in Crl.M.P.No.59136 of 2023 in STC.No.3066 of 2023 dated 10.01.2024, dismissing the application filed by the petitioner under Section 311 of Cr.P.C to recall PW1 for further cross-examination.

2. Heard Mr.C.Bhalakumaran, learned counsel for the petitioners and Mr.R.Ganesh Kuamar, learned counsel for the respondent.

3. The petitioner is facing trial before the Metropolitan Magistrate, Fast Track Court – I, Allikularm, Egmore, for the offence under Section 138 of the Negotiable Instruments Act. Earlier, the petitioner filed an application under Section 91 of Cr.P.C for a direction to the respondent/complainant to furnish certain documents including the income tax returns. This application came to be dismissed vide order dated 08.11.2023. The same was put up to challenge before this Court in Crl.O.P.No.23756 of 2023 and this petition was disposed of vide order dated 24.11.2023 by this Court of which relevant paragraphs are extracted below:

> *"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.*
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> *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.*
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> *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/- .*
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> *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.*
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> *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."*

4. Pursuant to the above order, the petitioner wanted to mark the Income Tax Returns by recalling PW1 and to confront PW1 based on the documents that is sought to be relied upon by the petitioner. This application came be be dismissed by the Court below vide order dated 10.01.2024. The same has been put up to challenge in this petition.

5. In this considered view of this Court, the Income Tax Returns of the respondent/complainant cannot be marked through the petitioner. That apart, the petitioner only wants to put some questions to PW1 in respect of Income Tax Returns that is sought to be relied upon by the petitioner. Therefore, one opportunity can be given to the petitioner in this regard. This is more so since the petitioner had complied with the earlier direction issued by this Court and had issued a demand draft for a sum of Rs. 5,00,000/- (Rupees Five Lakhs Only) in the name of the respondent/complainant.

6. It is brought to the notice of this Court that this case is posted for hearing on 23.02.2024. On that date, PW1 shall be present before the Court below and the further cross-examination of PW1 shall be completed on the same day. If for any reason, the petitioner does not cross-examine PW1 on the date fixed by this Court, the petitioner will loose his right to recall PW1 in future.

7. It is also brought to the notice of this Court that the FTC-1, Egmore is now handled by the in-charge Magistrate. Hence this order should be brought to the notice of the in-charge Magistrate in order to enable the petitioner to further cross-examine PW1 on the next date of hearing.

8. The order passed by the Metropolitan Magistrate, Fast Track Court-I, Allikulam, Egmore dated 10.01.2024 in Crl.M.P.No.59136 of 2023 in S.T.C.No.3066 of 2023 is hereby set aside. The Court below is directed to complete the proceedings in STC No.3066 of 2023 within a period of two months from the date of receipt of copy of this order.

10. In the result, with the above observations and directions this petition stands allowed.

19.02.2024

Index :Yes/No
Speaking Order : Yes/No
Neutral Citation Case: Yes/No
nst

To:

1.Metropolitan Magistrate,
Fast Track Court-I,
Allikulam,
Egmore.

2.The Public Prosecutor
High Court of Madras.

N. ANAND VENKATESH,J.

nst

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