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Crl.O.P.No.2278 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.2278 of 2024

G.Mickel Raj

... Petitioner

Vs.

Albert Raja

... Respondent

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records and to set aside the order passed in Crl.M.P.No.13408 of 2023 in C.C.No.1000 of 2021 by Fast Track Court – V, Saidapet dated 01.11.2023

For Petitioner : M/s.N.Elayaraja
For Respondent : M/s.M.Antony Jesurajan

O R D E R

This petition has been filed challenging the order passed by the Court below in Crl.M.P.No.13408 of 2023 in C.C.No.1000 of 2021 dated 01.11.2023, partly allowing the application by directing the petitioner/ complainant to produce the complete bank statement from 01.01.2017 to 31.12.2019.



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2. When the matter came up for hearing on 07.02.2024, this Court passed the following order:

"Notice to the respondent, returnable by 28.02.2024. Private notice is also permitted.

2. The petitioner is also permitted to serve notice on the counsel appearing on behalf of the respondent before the Court below.

3. The respondent had filed an application in Crl.M.P.No.13408 of 2023 for a direction to the petitioner to furnish certain documents. The Court below allowed the application in part to the extent of directing the petitioner to produce the bank statements for the period from 01.01.2017 to 31.12.2019. On going through the cross-examination of the petitioner who was examined as PW1, it is not seen that the respondent has taken a defence that the petitioner did not have the financial wherewithal. In the light of such a defence, there is absolutely no requirement to direct the petitioner to produce the bank statements.

4. Post this case under the caption 'For Orders' on 28.02.2024."



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3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. The petitioner is the complainant before the Court below. On carefully going through the reply given by the respondent/ accused and also the cross examination that was done on P.W.1, it is seen that the respondent has denied the very loan transaction that is alleged to have been made by the petitioner. The questions that have been put to the respondent also reflects the same. However, the respondent filed an application under Section 91 of Cr.P.C. to direct the petitioner to furnish certain documents. It included the income tax returns, the money lending licence if any, issued to the petitioner and also the bank statement from 01.01.2017 to 31.12.2019.

5. The Court below rejected the claim made by the respondent in so far as the income tax returns and the money lending licence is concerned. The Court below allowed the application by directing the petitioner to furnish the bank statement from 01.01.2017 to 31.12.2019. This limited relief that was granted by the Court below



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has been put to challenge in the present petition.

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6.A Court cannot issue directions to produce the documents without assigning proper reasons and as a matter of routine. The specific defence that has been taken by the respondent/ accused is that there was absolutely no loan transaction between the petitioner and the respondent. The questions that have been put to P.W.1 during cross examination also makes this stand very clear. When such a stand has been taken, there is no reason to call for the bank statement from 01.01.2017 to 31.12.2019. Such a statement can be claimed if the respondent had raised the defence that the petitioner did not have the finance wherewithal to lend the money. If the respondent raises the defence of finance wherewithal, the original defence that was taken by the respondent to the effect that there was no loan transaction with the petitioner, will fail. Two contradicting defence cannot be permitted to be taken and it will only act against the interest of the respondent. Therefore, the respondent has to stick on to the defence that has already been taken and it is clear from the reply notice as well as in the cross examination of P.W.1.

7.In the light of the above discussion, this Court does not find



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any reason as to why the petitioner must furnish the bank statement from 01.01.2017 to 31.12.2019. Such a direction given by the Court below is liable to be interfered by this Court and accordingly, the order passed by the Court below in Crl.M.P.No.13408 of 2023 in C.C.No.1000 of 2021 dated 01.11.2023, is hereby set aside.

8.In the result, this criminal original petition is allowed. It is left open to the parties to raise all the grounds before the Court below and the same shall be considered on its own merits and in accordance with law. The Court below is directed to complete the proceedings in C.C.No.1000 of 2021, within a period of three months from the date of receipt of copy of this order.

01.03.2024

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

- 1.The Fast Track Court – V,
Saidapet.
- 2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

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