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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.6663 of 2023
and Crl.MP.No.4203 of 2023

K.Sakthivelmourougan ..Petitioner/Petitioner/Accused

.Vs.

J.Anand .. Respondent /Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and set aside the order passed by the learned Judicial Magisterial No.2 Puducherry in Crl.MP.No.7616 of 2019 in STC No.2489 of 2015 and STC.No.3093 of 2015 by its order dated 30.9.2022.

For Petitioner : Mr.A.Nagarajan

For Respondent : Mr.R.Nandhakumar

O R D E R

This criminal original petition has been filed challenging the order passed by the Court below in Crl.MP.No.7616 of 2019, dated 30.9.2022, dismissing the application filed by the petitioner under Section 91 Cr.PC., to direct the respondent to furnish certain documents.

2.Heard Mr.A.Nagarajan, learned counsel for the petitioner and Mr.R.Nandhakumar, learned counsel or the respondent.

3.The petitioner is facing trial before the Court below for offence under Section 138 of the Negotiable Instruments Act, 1881. The respondent/complainant examined himself as PW-1 and during the cross examination, certain answers were elicited from PW-1 with respect to maintenance of books of accounts, trial balance, profit and loss account and balance sheet etc. The petitioner had put questions to the respondent as to whether he is in possession of those records and some answers were elicited in that regard.

4.The petitioner filed an application under Section 91 Cr.PC, for a direction to the respondent to produce day book, ledger, trial balance, profit and loss account, balance sheet for the period 2013-2014 and 2014-2015. The petitioner also sought for income tax returns for the two accounting years. That apart, the petitioner also sought for bank passbook account/statements for the period from 01.1.2014 to 31.12.2014.

5.The respondent filed a counter and he was willing to furnish certain documents and according to the respondent, only those documents are relevant for the case. The list of documents which the respondent was willing to furnish, did not satisfy the requirements of the petitioner. The petitioner basically wanted to question the financial wherewithal of the respondent through those documents and therefore the petitioner was insisting for the production of documents that were mentioned in the application filed under Section 91 Cr.PC.

6.The Court below went into the rival claims and came to a conclusion that the respondent cannot be insisted to produce the documents sought for by the petitioner and there was no reason for asking the respondent to furnish those documents. Accordingly, the application came to be dismissed. Aggrieved by the same, the present criminal original petition has been filed before this Court.

7.It is brought to the notice of this Court that the respondent has furnished the income tax returns, statement of income, balance sheet and profit and loss account for assessment years 2014-2015 and 2015-2016. That apart, the bank statements have already been marked through the Bank Manager for the period from 1.1.2014 to 31.7.2014. The relevant account statements that were marked was also produced before this Court.

8.The petitioner has taken efforts to direct the respondent to furnish certain documents. The respondent has furnished only some of the documents which according to the respondent are relevant. Therefore, if the respondent has not produced all the documents as requested by the petitioner, the petitioner can always raise the ground of adverse inference before the Court below based on the answers that were elicited from the respondent during cross examination. That apart, whatever documents have been furnished by the respondent can be marked through the respondent during cross examination. In the same manner, it will also be left open to the respondent to explain the Court during final arguments as to why some of the documents that were sought for by the petitioner are not relevant and therefore was not produced. Ultimately, it is for the trial Court to consider the same and to pass the judgment after appreciation of evidence.

9.In the light of the above discussion, this Court is not inclined to interfere with the order passed by the Court below. The documents that are furnished by the respondent can be marked and the petitioner will be permitted to put necessary questions with respect to these documents. The other issues can be raised at the time of final arguments.

10.This criminal original petition is accordingly disposed of with a direction to the Court below to complete the proceedings in STC Nos.2489 and 3093 of 2015, within a period of **three months** from the date of receipt of copy of the order. Consequently, connected miscellaneous petition is closed.

11.01.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

To
Judicial Magisterial No.2 Puducherry.

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N. ANAND VENKATESH., J
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