IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.Nos.8926 and 8928 of 2024
and
Crl.MP.Nos.6382 and 6386 of 2024

1. M/s. Allaya Process
   A Partnership Firm,
   Rep by its Partner
   G.Pushparaj

2. G.Pushparaj

3. P.Jayanthi ... Petitioners (in both Crl.OPs)

Vs.

S.Palani Maheshkumar ... Respondent (in both Crl.OPs)

Common Prayer: Criminal Original Petitions are filed under Section 482 of Criminal Procedure Code, praying to set aside the order dated 02.04.2024 made in Crl.MP.Nos.1995 and 2004 of 2024 in STC.Nos.651 and 2948 of 2019 respectively on the file of the learned Judicial Magistrate, Fast Track Court, Tirupur.

For Petitioners : Mr.S.Karthikeyan
for M/s.Dharani
(in both Crl.OPs)

COMMON O R D E R

These petitions are filed challenging the order of dismissal passed by the learned Judicial Magistrate, Fast Track Court, Tirupur, in Crl.MP.Nos.1995 and 2004 of 2024 in STC.Nos.651 and 2948 of 2019 respectively dated 02.04.2024. The applications are filed by the petitioner/accused under Section 91 of Cr.P.C calling for the Income Tax Returns of the complainant/respondent.

2. The learned counsel appearing for the petitioners submitted that the case of the complainant is that the subject cheque was issued to discharge the loans availed by cash. The cheque amount in one case is around Rs.10,00,000/- and in another case is around Rs.25,00,000/-. The complainant has no wherewithal to advance that money and therefore to prove the fact that there was no such borrowing, income tax returns of the complainant is required. However, the trial Court has dismissed the petitions stating that the said applications are filed only to delay the process.

3. The learned counsel appearing for the petitioners further submitted that since the provision of Negotiable Instruments Act cause reverse burden on the accused, to prove that the cheques were not issued

for any enforceable debt, the Income Tax Returns of the complainant is very much necessary, since the transaction exceeds Rs.20,000/- but not through bank.

4. A perusal of the impugned order as well as the examination of P.W.1 the complainant, it is very clear that the complainant admits in the cross examination that Rs.15,00,000/- was transferred through bank and rest of the money was paid by cash. He admits that he has disclosed the transaction in his Income Tax Returns, he has not filed the Income tax returns before the Court.

5. The learned petitioners' counsel states that the production of Income tax returns under Section 91 of Cr.P.C. is necessary to discharge the burden, but, the trial Court had erroneously dismissed the applications by observing that the applications are filed only to protract the proceedings.

6. This Court after perusing the records and the submissions finds that the production of Income Tax Return is the burden of the complainant, once he admits that he has shown the transaction in his account. If he has not produced that records, the Court shall draw necessary inference out of it. For the said purpose, the accused need not strain himself for production of that document ie., Income Tax Returns.

The payment of cash exceeding Rs.20,000/- may be an offence under Income Tax Act, but it does not mean that if the complainant is able to prove that he has paid the money to the accused, he will not be entitled to sustain a complaint under Section 138 of Negotiable Instruments Act. These facts are to be canvassed by the petitioners through letting in evidence and cross examining the complainant's witnesses.

7. The Income Tax Returns of the complainant if not filed though admitted that the transaction has been reflected in his return, the trial Court will take necessary notice of the fact while deciding the case. The trial Court is of the opinion that the production of the Income Tax Returns of the complainant is not necessary for the present case.

8. The complainant has also though fit that the production of his Income Tax Returns is not necessary for this case. Whether it is necessary to prove the complaint, the Court will take note of it and arrive at appropriate decision. It is not necessary for the Court to call for the Income Tax Returns if the complainant himself is not ready to file.

9. In view of the above, these Criminal Original Petitions are disposed of. Consequently, the connected miscellaneous petitions are closed.

Vv **12.04.2024**

To

1. The Judicial Magistrate, Fast Track Court,
   Tirupur.

2. The Public Prosecutor,
   High Court of Madras,
   Chennai.

Dr.G.JAYACHANDRAN,J.

Vv

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and
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