



Crl.O.P.No.13091 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.01.2024

Coram:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.13091 of 2023

and

Crl.M.P.No.7961 of 2023

K.Ravichandran

.. Petitioner

/versus/

D.Shanmugam

.. Respondent

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the records relating to the Crl.M.P.No.2088 of 2019 in S.T.C.No.787 of 2019 on the file of the Judicial Magistrate No.3, Salem, set aside the same and to direct the learned Magistrate to summon the documents sought for by the petitioner.

For Petitioner : Mr.S.Kalyanaraman

For Respondent : No appearance



ORDER

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This Criminal Original Petition has been filed challenging the order passed by the Court below in Crl.M.P.No.2088 of 2019 in S.T.C.No.787 of 2019, dismissing the application filed under Section 91 of Cr.P.C.

2. The petitioner is facing trial before the Court below for the offence under Section 138 of the Negotiable Instruments Act, 1881. The defence taken by the petitioner is that the respondent/complainant does not have the financial wherewithal to lend the amount of Rs.5,00,000/-. Necessary questions were also put to the respondent during the cross examination.

3. The respondent in the course of cross examination, took a stand that he is receiving regular monthly amount from his son and he had saved that amount and out of such savings, the amount was lent to the petitioner.

4. Therefore, the petitioner filed an application under Section 91 of Cr.P.C., for a direction to the respondent to produce certain documents.



Those documents pertain to the employment of the son of the respondent.

According to the petitioner, these documents are required to test the financial wherewithal of the respondent.

5. The respondent resisted this application on the ground that those documents are irrelevant and that the application has been filed only to drag on the proceedings.

6. The Court below, on considering the facts and circumstances of the case and the reason assigned by the petitioner, dismissed the application. Aggrieved by the same, the present Criminal Original Petition has been filed before this Court.

7. Heard the learned counsel appearing for the petitioner and carefully considered the materials available on record. The respondent has been served with notice and his name has also been printed in the cause list and there is no appearance either in person or through a counsel.

8. The petitioner has taken necessary steps to get relevant



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documents from the respondent in order to question the financial wherewithal of the respondent. This was done based on the answers, that were elicited from the respondent during the cross examination. If ultimately, the respondent is not willing to produce those documents, it is always left open to the petitioner to raise the plea of adverse inference before the Court below. The same will be taken into consideration and the Court will take a decision on its own merit and in accordance with law. Except giving this clarity, this Court is not inclined to interfere with the order passed by the Court below. The findings rendered by the Court below while dismissing the application will not have any bearing, while deciding the main case.

9. In the result, this Criminal Original Petition is disposed of in the above terms. Consequently, connected Miscellaneous Petition is closed.

19.01.2024

Index:yes/no
Neutral Citation:yes/no
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To:
The Judicial Magistrate No.3, Salem.

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N.ANAND VENKATESH, J.
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