IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2024

CORAM

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Crl.O.P.No.11277 of 2024
and
Crl.M.P.No.7624 of 2024

1.M/s.Rishs International School,
Rep.by its Chairman
N.Sakthivelu

2.N.Sakthivelu
Chairman,
M/s.Rishs International School ... Petitioners

Vs.

C.M.Babu,
S/o.C.Munitathnam
Proprietor of M/s.CMB Traders ... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleased to set aside the order passed in Crl.M.P.No.988 of 2024 in S.T.C.No.3066 of 2023 dated 16.04.2024 on the file of the XIX Metropolitan Magistrate Court, Egmore at Allikulam, Chennai.

For Petitioners : Mr.C.Bhalakumaran

O R D E R

The petitioner herein is the accused in a private complaint initiated under Section 138 of Negotiable Instruments Act.

2. The transaction is during the financial year 2019-2021.

Pending trial, the accused filed an application under Section 91 Cr.P.C., for production of Income Tax Return of the complainant for the financial year 2019-2020. This application was dismissed by the trial Court and being aggrieved, the petitioner/accused preferred Crl.O.P.No.23756 of 2023. This Court vide order dated 24.11.2023 allowed the application under Section 91 Cr.P.C., and set aside the order of the trial Court in respect of summoning the Income Tax Return of the complainant for the accounting year 2021, which will reflect the dealings of the financial year 2019-2020. This order was passed on condition that the production of document and examination of documents should be completed within 45 days. Thereafter, the income tax department has produced the relevant documents.

3. The petitioner has sought leave of the Court to cross examine the complainant in connection with the Income Tax Return. That application was dismissed by the trial Court. However on further, the petition before the High Court under Section 482 Cr.P.C., the petitioner/accused was granted permission to cross examine the complainant PW.1 in connection with the Income Tax Return. Thereafter, the case has been posted for defence witness. Since the accused has not marshalled any witness on his side, the matter now stands for arguments. At this juncture, the petitioner has taken out another application to summon the auditor of the complainant. Taken note his application under Section 91 Cr.P.C., to direct the Chartered Accountant, KHEMKA company to produce entire records pertaining to the assessment year 2019-2020 and 2021 and give evidence. The trial Court after considering the facts, had passed a detailed order why this application should not be allowed. Being aggrieved the present petition under Section 482 of Cr.P.C., is filed.

4. The learned counsel appearing for the complainant/respondent has filed counter wherein, the number of miscellaneous petitions filed by the accused after completion of complainant side evidence been listed as under:-

S.No	***Date***	***MP***	***Under Section***
1	27/06/23	25089/23	145 of NI At r/w 311 of Cr.P.C. Allowed 03.07.2023
2	19/07/23	29816/23	91 Cr.P.C., for summoning Income Tax Returns-Dismissed 20.08.2023
3	010823	31985/23	315 Cr.P.C., for examining the accused as witness-Allowed on 11.08.23

S.No	Date	MP	Under Section
4	13/09/23	40692/23	145 of NI At r/w 311 of Cr.P.C. Dismissed on 04.10.2023
5	13/10/23	46325/23	Cause production of Statement of Accounts-Dismissed on 08.11.2023/Account Statement and Documents produced
6	111223		Produced Hon'ble High Court order in Crl.O.P.No.23756 of 2023 allowing the production of documents (CMP.29816/23) and produced DD for a sum of Rs.5,00,000/- in compliance the complainant produced IT Returns
7	20/12/23	59136	145 of NI At r/w 311 of Cr.P.C. Dismissed on 10.01.2024.Petitioner preferred Crl.O.P.No.1549 of 2024
8	010424	988/2024	Dismissed on 16.04.2024

5. It is a clear case of abuse of process of law to protract the proceedings and the same is explicitly exhibited by the conduct of the petitioner herein. Initially application was filed for production of Income Tax Returns documents. Even after producing all these documents, now he has taken out an application to summon all records pertaining to the complainant's account which is maintained by his auditor. It is nothing but a roving enquiry to be conducted with this frivolous application, which has filed only to protract the proceedings. If this attitude is permitted after summoning of the records by the auditor, the petitioner even may ask for other details which may not be ever remotely relevant to the complaint. The specific case of the accused is that the money borrowed partly discharged and only Rs.5 lakhs is liable to be paid and not Rs.15 lakhs as claimed by the complainant. Even for that extend he has not let in any evidence in spite of been permitted to let in defence witnesses. While so, the present petition is filed clearly to delay the process and not for establishing his defence which he could have done it by letting positive evidence when he was given opportunity. Hence this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition is also dismissed.

08.07.2024

Index : Yes/No
Neutral Citation : Yes/No
rpl

To

The XIX Metropolitan Magistrate Court, Egmore at Allikulam, Chennai.

Dr.G.JAYACHANDRAN,J.

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Crl.O.P.No.11277 of 2024

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