IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.11.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.No.21976 of 2024
and
Crl.M.P.No.12539 of 2024

T.Santhakumari .. Petitioner

Vs.

R.Sakthivel .. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order passed in Crl.M.P.No.19845 of 2024 on the file of the XXV Metropolitan Magistrate Court, Egmore, Chennai.

For petitioner : Mr.A.Navaneethakrishnan, Senior Counsel for M/s.C.Iyyappa Raj

For respondents : Mr.S.L.Sudharsanam for Mr.G.B.Rajesh

ORDER

The present petition has been filed to set aside the order dated 09.08.2024 passed in Crl.M.P.No.19845 of 2024 on the file of the XXV Metropolitan Magistrate Court, Egmore, Chennai.

2. The respondent has filed a complaint under Section 138 of the Negotiable Instruments Act before the XXV Metropolitan Magistrate, Egmore, Chennai in S.T.C.No.10105 of 2023, in which, the petitioner herein is an accused and the respondent herein is the complainant.

3. The respondent, after filing proof affidavit, adduced evidence in chief examination and also marked the documents, when the matter is posted for questioning under Section 313 Cr.P.C., at that time, the petitioner has filed a petition under Section 91 Cr.P.C. for production of the Income Tax Returns, etc., of the respondent, and the said petition was dismissed by the Court below and since the order is passed under interlocutory petition, and since no revision proceedings are available, the petitioner has invoked the present Crl.O.P,. under Section 482 Cr.P.C. challenging the said order dated 09.08.2024 passed in Crl.M.P.No.19845 of 2024 in S.T.C.No.10105 of 2023.

4. The learned Senior Counsel appearing for the petitioner submitted that the petitioner has to rebut the presumption under the Negotiable Instruments Act and therefore, she has filed an application under Section 91 Cr.P.C. for production of Income Tax Returns, etc., of the respondent, and the said petition was dismissed, and therefore, the accused is before this Court by filing this petition under Section 482 Cr.P.C. Since the duty of the petitioner is to rebut the presumption under Section 139 of the Negotiable Instruments Act, all the possibilities of defence have to be taken by the petitioner and therefore, one of the documents is the Income Tax Returns, which are also important to rebut the presumption, and however, the learned Magistrate has failed to give an opportunity to the petitioner to rebut the presumption and the said petition was dismissed, against which, the present petition is filed by the petitioner/accused.

5. Learned Senior Counsel appearing for the petitioner has placed reliance on the following judgments:

(i) 2020 (15) SCC 348 (Anss Rajashekar Vs. Augustus Jeba Ananth);

(ii) 2024 SCC Online Calcutta 5312 (Raju Saha Vs. State of West Bengal);

(iii) 2001 (6) SCC 16 (Hiten P.Dalal Vs. Bratindranath Banerjee) and

(iv) 2021 (5) SC 283 (Kalamani Tex and another Vs. P.Balasubramanian).

6. Learned counsel for the respondents submitted that the petitioner has voluntarily registered the mortgage deeds. Further, after receiving the notice, she has only sent reply stating that the amount actually received, had not been mentioned in the mortgage deeds. She has not taken any other defences. Even after filing proof affidavit and marking of documents, and giving sufficient opportunities, the petitioner did not choose to cross-examine the respondent/complainant and later she has filed a petition under Section 91 Cr.P.C. before the Magistrate for production of the Income Tax Returns, and even in the said petition filed before the Magistrate, she has not given the reasons for requirement of the said Returns. Therefore, the learned Magistrate has observed that the Income Tax Returns are not necessary to decide the case and the learned Magistrate has rightly dismissed the said petition and therefore, there is no merit in this Crl.O.P., which is liable to be dismissed.

7. Heard both sides and perused the materials available on record.

8. Admittedly, the respondent has filed a complaint before the Court below against the petitioner and the respondent was examined in chief and marked the documents and at this stage, the petitioner filed an application invoking Section 91 Cr.P.C. for production of certain documents, namely the

Income Tax Returns, etc., which was dismissed. On a reading of the petition filed before the Magistrate, it is seen that the petitioner has not assigned any reason for production of those Returns. Therefore, the learned Magistrate has rightly dismissed the petition. However, there is no reason to interfere with the order passed by the learned Magistrate. Hence, this Crl.O.P. is dismissed. However, the petitioner is at liberty to take all the defences before the Magistrate during the course of trial.

9. With the above observations, this Crl.O.P. is disposed of and the learned Magistrate is directed to complete the enquiry and dispose of the complaint itself, in accordance with law, within a period of three months from the date of receipt of a copy of this order. Consequently, Crl.M.P. is closed.

05.11.2024

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To

The Public Prosecutor, High Court, Madras.

P.VELMURUGAN, J

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