IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.No.21997 of 2024 and
Crl.M.P.No.12549 of 2024

P.Suresh Babu ... petitioner

Vs.

1. M/s.Ramraj Industries rep. by its Partners
   Kilmurungai Village, Ambur Taluk, Tirupathur District

2. P.Mangaiyar Tilagam
   Partner M/s.Ramraj Industries
   No.16/6, Periyakammavara Street
   Kaspa -A, Ambur, Tirupathur District - 635 802

3. P.Rajasekar ... Respondents

Prayer: Criminal Original Petition filed under Section 528 of B.N.S.S. to call for records pertaining to the order in C.M.P.No.630 of 2023 in S.T.C. No.152 of 2018 dated 04.04.2024 passed by the learned Additional District Munsif cum Judicial Magistrate, Ambur and set aside the same.

For petitioner : Mr.B.Gopalakrsihnan
For Respondents : Mr.B.Barani Bharathi
for M/s.V.Srimathi

ORDER

This Criminal Original Petition has been filed challenging the order in C.M.P.No.630 of 2023 in S.T.C. No.152 of 2018 dated 04.04.2024 passed by the learned Additional District Munsif cum Judicial Magistrate, Ambur and to set aside the same.

2. The case of the petitioner is that the petitioner has filed a private complaint against the respondents under Section 138 of Negotiable Instruments Act in STC No.152 of 2018 on the file of the Additional District Munsif-cum-Judicial Magistrate, Ambur. In the said case, the petitioner was examined as P.W.1 and pending examination, the respondents filed a petition in Crl.M.P.No.630 of 2023 under Section 91 Cr.P.C. to direct the petitioner/complainant to produce his Income Tax Returns from the year 2012-2013 to 2017-2018 to prove the non payment of cheque amount by the petitioner/complainant to the accused and the said petition was allowed by

order dated 04.04.2024. Challenging the same, the petitioner/complainant has filed the present petition invoking Section 428 of Cr.P.C/528 of B.N.S.S.

3. The learned counsel for the petitioner submitted that the petitioner had already stated that he had not mentioned the disputed transaction in the Income Tax Returns and despite the same, the respondents, filed the petition under Section 91 Cr.P.C. and the learned Magistrate also failed to consider the same and allowed the petition. Hence, the present petition is filed to set aside the order of the Magistrate.

4. Despite giving sufficient opportunity, the respondents are not ready to argue the matter.

5. Heard and perused the materials available on record.

6. The petitioner has filed a complaint under Section 138 Cr.P.C. against the respondents. The scope of Section 138 of Negotiable Instruments Act is very limited. The scope of the Act is to find out as to whether the disputed cheque has been issued to discharge the legally enforceable debt or not. Mere

non mentioning of the cheque amount or any transaction in the Income Tax Returns, will not take away the right of the petitioner to prosecute the respondents under Section 138 of Negotiable Instruments Act. If at all any person who is having over and above the taxable income fails to file Income Tax, it is for the Income Tax Department to take care of it. In this case, since because the particular transaction was not mentioned in the Income Tax returns, it does not mean that the petitioner lost his right and the respondent can escape from the liability. The learned Magistrate failed to consider that the petitioner had already stated that the said transaction was not mentioned in the Income Tax Returns and despite the same, the learned Magistrate has allowed the petition. Under these circumstances, the order passed by the learned Magistrate is liable to be set aside.

7. Accordingly, the order passed by the learned Additional District Munsif cum Judicial Magistrate, Ambur, in C.M.P.No.630 of 2023 dated 04.04.2024 in S.T.C. No.152 of 2018 is set aside.

8. The learned Magistrate is directed to proceed with the trial in accordance with law and dispose of the case within a period of three months from the date of receipt of a copy of this order.

9. With the above directions, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

13.11.2024

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No
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To
The Additional District Munsif cum Judicial Magistrate,
Ambur

P.VELMURUGAN,J.

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Crl.O.P.No.21997 of 2024

13.11.2024