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CrI.OP.No.26614 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.26614 of 2023

and

CrI.M.P.No.18539 of 2023

K.Kannan

S/o.Ayyanar @ Periyasamy

... Petitioner

Vs.

N.Rajendiran

S/o.Natesan

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., pleaded to set aside the order passed in CrI.M.P.No.4422 of 2022 in S.T.C.No.713 of 2018 by the learned Judicial Magistrate III, Salem, dated 14.06.2023.

For Petitioner

: Mr.J.Prithivi

ORDER

This petition has been filed challenging the order passed by the Court below in CrI.M.P.No.4422 of 2022 in S.T.C.N.713 of 2018, dated 14.06.2023 dismissing the petition filed by the petitioner u/s.91 Cr.P.C. to direct the respondent to produce certain documents.



2. The petitioner is facing trial before the Court below for offence u/s.138 of the Negotiable Instruments Act. The respondent/complainant examined himself as PW-1. The petitioner wanted to establish that the respondent did not have the financial wherewithal to lend the cheque amount to the petitioner. In view of the same, the petitioner filed a petition for a direction to the respondent to furnish certain documents. This petition has been dismissed by the Court below on the ground that the respondent has not even been cross-examined in this case for more than 3½ years. Aggrieved by the same, the present petition has been filed before this Court.

3. Heard Mr.J.Prithivi, learned counsel for petitioner and carefully perused the materials available on record.

4. Learned counsel for petitioner submitted that evidence of PW-1 was closed and the case is at the stage of Section 313 Cr.P.C. questioning.

5. In the considered view of this Court, the petitioner has not even established the defence by cross-examining PW-1. The relevant questions have not even been put to PW-1 and even before the petitioner wanted the respondent to furnish certain documents, the respondent has filed a counter stating that he



CrI.OP.No.26614 of 2023

documents sought for by the petitioner. Under such circumstances, it is too early for the petitioner to seek for documents without establishing a *prima facie* defence.

6. In the light of the above discussion, this Court does not find any ground to interfere with the order passed by the Court below. It is left open to the petitioner to recall and cross-examine PW-1. If ultimately, PW-1 is feigning ignorance or is not willing to produce documents, the petitioner can always argue the case by requesting the Court below to take adverse inference.

This Criminal Original Petition is disposed of with a direction to the Court below to complete the proceedings in S.T.C.No.713 of 2018 within a period of three (3) months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

08.01.2024

Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

gm

To

The Judicial Magistrate III,
Salem.

<https://www.mhc.tn.gov.in/judis>



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Crl.OP.No.26614 of 2023

N.ANAND VENKATESH, J.

gm

Crl.O.P.No.26614 of 2023

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