BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 12.02.2024

CORAM

The Hon`ble Mr.Justice M. DHANDAPANI

CRL OP(MD) Nos.12696 and 12699 of 2022

M.K.Rajesh Kannan ... Petitioner in both petitions

Vs

TulasiRam ... Respondent in both petitions

PRAYER :- Criminal Original Petitions filed under section 482 of Cr.P.C., to call for the records in connection with the order passed by the learned Judicial Magistrate, Nilakottai Cr.M.P.Nos.790 and 792 of 2022 in S.T.C.No.721 and 722 of 2016 dated 26.05.2022 and set aside the same by allowing this petition.

For Petitioner : M/s. S.Sivaprakash

For Respondent : M/s. N. Dilipkumar

ORDER

These petitions have been filed to set aside the order dated 26.05.2022 in Cr.M.P.Nos.790 and 792 of 2022 in S.T.C.No.721 and 722 of 2016 passed by the Judicial Magistrate, Nilakottai.

2. It is the case of the petitioner that the petitioner is an accused in STC Nos.721 and 722 of 2016. The trial in the said cases were completed and it was in the stage of pronouncing orders. In that stage, an application has been filed under Section 91 Cr.P.C. by the petitioner to produce the income tax statements of the complainant. However, the said applications were dismissed by the court below stating that in order to drag on the proceedings, the said applications were filed.

3.The learned counsel for the petitioner would submit that since the complainant himself has averred that he has mentioned the loan amount in his income tax returns from the year 2015-2021 and hence, in order to produce the said returns pertaining to the years from 2015 to 2021, the petitioner has filed the applications under Section 91 Cr.P.C., which were dismissed, against which, the petitioner is before this court with these petitions. He would further submit that the borrowal of Rs.18 lakhs by the petitioner was mentioned in the income tax returns by the complainant as if he has obtained the said amount from his father and wife. He would submit that since it is averred by the complainant himself, the petitioners has filed those applications and hence, prays for interference. He would further submit that if a direction is issued for the production of income tax returns, the petitioner is ready to abide by any conditions that may be imposed by this Court.

4. The learned counsel for the respondent would however submit that these applications were filed in order to drag on the proceedings and the trial in the cases were completed and it was in the stage of pronouncing orders and hence, the court below has rightly rejected the case. Accordingly, he prays for dismissal.

5. This Court gave its anxious consideration to the rival submissions and perused the materials available on record.

6. It is a case under Section 138 of the Negotiable Instruments Act. Pursuant to initiation of proceedings, the trial has commenced and the petitioner/accused has been examined in chief and cross before the trial court and questioning under Section 313 Cr.P.C has also been completed. While so, the petitioner has filed applications under Section 91 Cr.P.C.

7. A perusal of cross-examination of P.W.1, dated 26.11.2021, it reveals that the petitioner herein borrowed Rs.18 lakhs from the complainant and the same was also reflected in the income tax returns for the year 2015-16 and 2016-17 respectively and P.W.1 also averred that he is ready to produce the same before the court below. When such an admission is given by P.W.1, at the time of cross-examination, based on such an admission only, the petitioner has filed the petitions under Section 91 Cr.P.C. Hence, the dismissal of the applications is *per se* illegal and needs interference. On the sole ground, the order of the court below dated 26.05.2022 is liable to be interfered with. Accordingly, these petitions are allowed and the order dated 26.05.2022 made in Cr.M.P.Nos.790 and 792 of 2022 in S.T.C.No.721 and 722 of 2016 is set aside. The respondent is directed to appear before the court below and

produce the income tax returns pertaining to the years 2015-16 and 2016-17 on 27.02.2024. On the said date, the petitioner is directed to pay Rs.5,000/- (Rupees five thousand only) to the respondent, for each petition, ie., Cr.M.P.Nos.790 and 792/2022. On the same day, the petitioner is directed to complete his chief and cross-examination. The trial court is directed to complete the trial in STC Nos.721 and 722 of 2016 within a period of three months from the date of receipt of a copy of this order.

12.02.2024

NCC : Yes/No
Index : Yes/No
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TO

The Judicial Magistrate,
Nilakottai

M.DHANDAPANI. J

RR

ORDER
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