BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.O.P(MD).Nos.21630 and 21631 of 2024
and
Crl.M.P(MD) Nos. 13398 and 13399 of 2024

Crl.O.P(MD) No.21630 of 2024

Ramathirupathi ... Petitioner

Vs.

Ganesan ... Respondent

Prayer: Criminal Original Petition filed under section 528 of BNSS to call for the records and set aside the order dated 19.11.2024 made in Cr.M.P. No.1448 of 2024 in C.C. No.32 of 2019 on the file of the District Munsif cum Judicial Magistrate, Natham.

For Petitioner : Mr. S.Venkatasubramanian

For Respondent : Mr. S.Sarvagan Prabhu

Crl.O.P(MD) No.21631 of 2024

Ramathirupathi ... Petitioner

Vs.

Ganesan ... Respondent

Prayer: Criminal Original Petition filed under section 528 of BNSS to call for the records and set aside the order dated 19.11.2024 made in Cr.M.P. No.1447 of 2024 in C.C. No.32 of 2019 on the file of the District Munsif cum Judicial Magistrate, Natham.

For Petitioner : Mr. S.Venkatasubramanian

For Respondent : Mr. S.Sarvagan Prabhu

COMMON O R D E R

The petitioner who is an accused in a case under Section 138 of the Negotiable Instruments Act filed by the respondent in C.C. No.32 of 2016, had filed a petition under Section 91 of Cr.P.C in Crl.M.P. No. 1448 of 2024 and a petition under Section 311 of Cr.P.C. in Crl.M.P.No. 1447 of 2024 to recall the respondent/complainant for further cross examination.

2. The contention of the petitioner is that on 10.01.2015 for the purpose of business transaction the petitioner had taken a loan for a sum of Rs.10,00,000/- from the respondent and on the same day he had issued a cheque drawn on ICICI Bank which was presented on 13.02.2015 and the same was returned for the reason 'signature varies'. Thereafter following the statutory provisions the complaint has been filed. In this case the respondent himself was examined as P.W.1 and his evidence was taken on 06.08.2022 and on 10.06.2024 the petitioner was questioned under Section 313 of Cr.P.C and the petitioner has filed a petition under Section 45 of Indian Evidence Act in Crl.M.P. NO.1775

of 2024 to examine the cheque and the signature . Thereafter during the pendency of the miscellaneous petition the petitioner was forced to pay a sum of Rs.1,50,000/- and further to pay the balance amount within the stipulated period. Later the compromise could not work out, but the trial Court taking note of the fact had dismissed the petition, further finding that on 10.10.2024, 91 Cr.P.c petition was filed by the petitioner in Crl.M.P. No.1192 of 2024 seeking for income tax returns of the respondent for the year 2010-2011,2011-2012, and 2012-2013 which was dismissed and now he has filed the 91 Cr.P.c petition for the financial year 2013-2014,2014-2015 and 2015-2016 and again the same has been dismissed.

3. The contention of the petitioner is that on wrong notion earlier 91 Cr.P.C was filed for the previous years since the cheque date is 13.02.2015, the present petition under Section 91 Cr.P.C has been filed to prove the transactions between the petitioner and the respondent. The trial Court has not considered the same and dismissed for the reason that no cross examination has been done in this regard to the complainant and dismissal of the same is not proper.

4. As regards the dismissal of petition under Section 311 of Cr.P.C, the trial Court finding that it is a consequential order to the petition filed under Section 91 of Cr.P.C., if allowed in view of the dismissal of petition under Section 91 of Cr.P.C., 311 Cr.P.C is also dismissed is not proper and the petitioner may be permitted to recall the respondent/ P.W.1 so that he can cross- examine to put forth his defence. The further contention of the petitioner is that the petitioner relied on the order of this Court in Crl.O.P(MD)No. 4618 of 2015 dated 06.09.2019 wherein this Court has observed that income tax returns cannot be compelled to be produced by the other parties unless he agrees the same otherwise adverse inference can be drawn as per the Indian Evidence Act. The trial Court has to take adverse inference against the respondent.

5. The learned counsel appearing for the respondent submitted that the petitioner to drag on the proceedings is filing one petition after another. Earlier as per Section 45 of the Indian Evidence Act the petitioner has filed a petition to forward the cheque to the handwriting expert. Later coming to know that his defence would get exposed he has left the petition as it is and later he filed a petition under Section 91 of

Cr.P.C., without any materials. The only contention of the petitioner is that the respondent has no financial capacity. The respondent in his evidence has clearly stated the source of income and to lend the amount of Rs.10 lakhs to the petitioner. The 138 Negotiable Instrument Case has been filed in the 2019 and already four years have been passed and the respondent is yet to see the colour of the coin and hence sought dismissal of the petitions.

6. Considering the submission and perusal of the materials it is seen that the cheque is dated 13.02.2015. The cheque was handed over to the handwriting expert. Later he had filed a petition under Section 91 of Cr.P.C in Crl.M.P. No.1192 of 2024 and the present petition under Section 91 of Cr.P.C in Crl.M.P. No.1448 of 2024 and these two petitions have been filed. Though for different financial years it is seen from the order that the petitioner has not put any question to the respondent/complainant with regard to the financial transaction and the same being declared through income tax Department. In view of the same summoning of the income tax returns will no way further the case of the petitioner.

7. In view of the same, this Court is not inclined to allow the petition with regard to petition under Section 311 of Cr.P.C., which is only a consequential order to the earlier order since Section 91 Cr.P.C petition has been dismissed in corollary to the dismissal of the petitioner under Section 311 Cr.P.C.

8. Hence the petitions stand dismissed. Consequently connected miscellaneous petitions are closed.

10.12.2024

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
aav

To;

The District Munsif cum Judicial Magistrate, Natham

M. NIRMAL KUMAR, J.

aav

Crl.O.P(MD).Nos.21630 and 21631 of 2024

10.12.2024