

ORDERS ON APPLICATION FILED UNDER
SECTION 91 of CR.P.C

The learned counsel for accused has filed this application with a prayer to allow the application and directed the complainant to produce the IT returns.

2. In the application the learned counsel for the accused has stated that, the complainant has filed this complaint against the accused punishable under section 138 of N.I.Act. The above matter is posted for defence evidence. It is necessary IT returns of the complainant, hence, it is very much necessary to produce IT returns before this court. Hence, he prays to allow the application.

3. The learned counsel for complainant has filed memo stating that the complainant was not paid any income tax and also he is not submitted income tax.

4. I have heard the arguments on both the sides and perused the material placed on record.

5. Upon hearing the arguments on both the sides, the following points arise for my consideration.

1. Whether the accused has made out sufficient grounds to allow the application filed under section 91 of Cr.P.C., for calling of the document as mentioned in the application?

2. What order?

6. My finding on the above points are as follows:

Point No.1: In the Negative.

Point No.2: As per final order for the following:

REASONS

7. **POINT No.1**: The complainant has filed this case against the accused for the offence punishable under section 138 of N.I.Act. Now, the case is posted for defence evidence. In the meantime the present application filed by the counsel for accused with a prayer to directed to produce the above mentioned document.

8. In the instant case, the accused has contending that it is necessary IT returns of the complainant. In this case already complainant filed memo stating that, he was not paid any income tax. Further the document sought by the accused is private document and hence, he has every way to obtain the said document by way of filing application before the competent authority. But without exhausting the available remedy he has directly approached before the court seeking directed the aforesaid complainant to produce the aforesaid document, which is not at all tenable in the eye of law and the court cannot act as per his whims and fancies. The party who approached to

the court has to produce the documents and to prove their case on their own leg and cannot take shelter on the weakness of the other side. Further the complainant has filed this case for recovery of debt due by the accused to the complainant and the production of the documents mentioned above is not at all related to the instant case. Further the accused can produce the documents, which is in his custody and to disprove the claim of the complainant. The accused always at liberty to prove his defence taken by him by producing the cogent documents in his custody.

9. The accused has contended that he has not issued any cheque regarding repayment of amount. It is settled position of law that who approached the Court must prove their case by leading cogent evidence. In the application the accused not stated and properly explained, what reasons this court directed him to produce the document. Therefore, only on the basis of application this court not directed the any persons production of documents. Therefore, parties prove their case in leading evidence and documents. Hence, this Court is of the opines that the application filed by the counsel for accused is not maintainable. Thus in the above circumstances, this court opines that the discretionary power of the Court Under Section 91 of Cr.P.C., can not be

invoked. On these grounds, the accused has failed to make out any grounds to allow the application. Accordingly, I answer the point No.1 in the Negative.

10. POINT No.2:- In view of my findings on Point No.1, I proceed to pass the following:

:ORDER:

The application filed by the counsel for accused under section 91 of Cr.P.C., is hereby rejected.

Facts and circumstances of the case there will be no order as to costs.

Hence case is posted for defence evidence Call On:

Sd/-
Senior Civil Judge and JMFC.,
Channagiri.