

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.07.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.OP.No.15611 of 2016

Prithiviraj

.. Petitioner/Appellant

Vs

S.Kamala

.. Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C., to direct the V Metropolitan Magistrate, Egmore, Chennai, now at Allikulam Road to refund above said sum of Rs.50,000/- deposited on 29.07.2015 on the account of C.C.No.3784 of 2000.

For Petitioner : Mr.P.Ramesh Kumar

O R D E R

This petition has been filed to direct the learned V Metropolitan Magistrate, Egmore, Chennai, now at Allikulam Road to refund above said sum of Rs.50,000/- deposited on 29.07.2015 on the account of C.C.No.3784 of 2000.

2. Heard the learned counsel for the petitioner and perused the materials placed on record.

3. For the sake of convenience, the parties will be referred to by their name. S.Kamala filed C.C.No.3784 of 2000 before the V Metropolitan Magistrate, Egmore against A.Prithiviraj for an offence under Section 138 of Negotiable Instruments Act. The V Metropolitan Magistrate, by Judgment dated 11.04.2011, convicted Prithiviraj for the offence under Section 138 of Negotiable Instruments Act and sentenced to undergo SI for six months and to pay a fine of Rs.5,000/-, in default to undergo SI for three months and to pay Rs.1,55,000/- as compensation within six months. Aggrieved by the Judgment, Prithiviraj filed Criminal Appeal No.93 of 2011 before the VI Additional Sessions Judge, City Civil Court, Chennai which was dismissed for default on 29.04.2016. Therefore, Prithiviraj filed Crl.R.C.No.258 of 2015 and this Court, by order dated 09.06.2015, restored Criminal Appeal No.93 of 2011 on file, on

condition that Prithiviraj should deposit a sum of Rs.50,000/- to the credit of C.C.No.3784 of 2000 before the V Metropolitan Magistrate, Egmore. In compliance with the order, Prithiviraj appears to have deposited Rs.50,000/- vide receipt No.75578 dated 29.07.2015 before the V Metropolitan Magistrate, Egmore, in C.C.No.3784 of 2000, as could be seen from the photocopy of the receipt enclosed in page No.12 of typed set of papers.

4. Pursuant to the deposit, Criminal Appeal No.93 of 2011 was heard and during the rehearing, Prithiviraj and Kamala arrived at an amicable settlement and filed a compounding application under Section 147 of Negotiable Instruments Act before the VI Additional Sessions Judge, City Civil Court, Chennai. The terms of the compromise has been set out in paragraph No.4 of the Judgment dated 29.04.2016 in Criminal Appeal No.93 of 2011, reads as follows:

"4. While the appeal was pending, the petitioner/accused had filed a petition in Crl.M.P.No.6116 of 2016 under Section 147 of Negotiable Instruments Act, to permit the complainant and the accused to compound the offence under Section 138 of Negotiable Instruments Act by stating that the complainant and the accused have decided to settle their dispute amicably and the accused has offered to pay a sum of Rs.1,50,000/- to the complainant towards full and final settlement of all her claim and the complainant also agreed to receive the same as full and final settlement of her claim against the accused towards the liability under the cheque bearing No.349639 dated 28.02.2000. It is further stated in the petition that the complainant also endorses her no objection for the accused to receive back the sum of Rs.50,000/- deposited with the learned V Metropolitan Magistrate on 29.07.2015 in the account of C.C.No.3784 of 2000. Accordingly, the petition in Crl.M.P.No.6116 of 2016, is allowed on 27.04.2015, in terms of the compromise arrived between the parties."

5. Pursuant to the compromise arrived at, Criminal Appeal No.93 of 2011 has been allowed and the conviction and sentence has been set aside and the operative portion of the Judgment is as follows:

"In the result, the appeal is allowed. The sentence and conviction passed by the learned V Metropolitan Magistrate, Egmore, Chennai in C.C.No.3764 of 2009 dated 11.04.2011 is set aside and the appellant/accused is acquitted under Section 320 [5] and [8] of the Code of Criminal Procedure read with Section 147 of Negotiable Instruments Act."

6. It is the grievance of Prithiviraj that the Appellate Court has not issued any direction to the V Metropolitan Magistrate to refund the sum of Rs.50,000/- and therefore, he is before this Court.

7. From the facts narrated above, it is clear that Prithiviraj will be entitled to the refund of sum of Rs.50,000/- and accordingly, this petition is allowed and the V Metropolitan Magistrate is directed to refund the sum of Rs.50,000/- paid vide receipt No.75578 dated 29.07.2015.

8. Mr.Ramesh Kumar, learned counsel for the petitioner submitted that Prithiviraj is in America and therefore, he will be back almost six months later.

9. Accepting the submissions of Mr.Ramesh Kumar, this Court directs the V Metropolitan Magistrate, to refund the amount to Prithiviraj as and when he appears before the Magistrate.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1.VI Additional Sessions Judge,
City Civil Court, Chennai

2.V Metropolitan Magistrate,
Egmore, Chennai.

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