

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Jurisdiction)

Friday, the Twenty Second day of December Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH
CRIMINAL ORIGINAL PETITION No.24289 of 2017

MS.S.MALAVIKA, [PETITIONER / INTERVENDER/DEFACTO COMPLAINANT]

Vs

1 MS.S.VIJAYALAKSHMI, [RESPONDENT/PETITIONER/ACCUSED]

2 THE STATE REP BY ITS, [RESPONDENT/RESPONDENT/COMPLAINANT]
THE INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH-II EDF-III,
GREATER CHENNAI POLICE
VEPERY, CHENNAI.

Petition praying that in the circumstances stated therein the High Court will be pleased to cancel the Anticipatory Bail granted in Accused/Respondent 11.08.2017 in CrI.O.P.No.11956 of 2017 and thus render justice.

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.C.A.THEAGARAJAN Advocate for the petitioner and of AND M/S.R.K.RAMAIHA Advocate for [R1] and MR.K.MATHAN Govt. Advocate for [R2] (CrI. Side) on behalf of the Respondent the court made the following order:-

For the sake of convenience, the parties will be referred to by their name.

2. Malavika is the de facto complainant and Vijayalakshmi is the accused. The facts of the case have been set out in paragraphs 2 to 4 of the order dated 11.08.2017 in CrI.O.P.No.11956 of 2017, which read as under:

"2. On the complaint lodged by Malavika, the respondent police registered a case in Crime No.16 of 2017 on 30.03.2017 under sections 420,120(B), 506(i) IPC against Vijayalakshmi (A1) and Vasna(A2). A1-Vijayalakshmi has preferred this anticipatory bail application.

3. This Court by order dated 27.06.2017, had referred the matter to the Mediation and Conciliation Centre, where the parties appear to have settled the dispute, as could be seen from the Mediation report dated 04.08.2017 received from the Assistant Registrar,

Tamil Nadu Mediation and Conciliation Centre, High Court, Madras, enclosing a copy of memo of compromise dated 28.07.2017 which reads as follows:

"2. We submit that because of the sincere efforts taken by the mediators we both decided to settle the matter amicably in compromise manner on the following conditions:

(a) The petitioner/accused came forward and consented to return a sum of Rs.33,00,000/- (Thirty Three Lakhs only) which was received by her from the intervener/de-facto complainant in the month of January 2016 as per their agreement dated on 18.01.2016. The petitioner/accused herein issuing two cheques for the same:

(i) Cheque No:720425, dated 20.01.2017, drawn on Indian Overseas Bank, St. Thomas Mount Branch, for a sum of Rs.10,00,000/- (Ten Lakh Only) as part payment, and

(ii) Cheque No:720426, dated 20.01.2018, drawn on Indian Overseas Bank, St. Thomas Mount Branch, for a sum of Rs.23,00,000/- (Twenty Three Lakh only) as remaining and full settlement.

(b) The petitioner/accused has also consented to return the dishonored Cheque amount of Rs.5,00,000/- which was issued by her in Cheque No.00043, dated 15.01.2017 drawn on HDFC Bank, Nandambakkam Branch, Chennai by way of new cheque bearing No.720424 drawn on Indian Overseas Bank, St. Thomas Mount Branch, dated 28.08.2017.

(c) The Intervenor/de-facto complainant also consented to receive the same from the petitioner/accused without having any other further claim in the future.

3. The intervenor/de-facto complainant submits that she accepted to receive the cheques above mentioned issued by the petitioner/accused and returns two cheques already issued by the petitioner/accused today.

4. The intervenor/de-facto complainant submits that she will make no objection endorsement for granting Anticipatory Bail to the petitioner/accused in the Cr.O.P.No.11956/2017 before the Hon'ble High Court at the time of hearing (or) on the hearing date.

5. The de-facto complainant under take to file

compromise petition before the trial Court (or) any other forum after the encashment of above mentioned cheques issued by the petitioner/accused before this Mediation Centre to discharge her legal liability.

6. We both under takes that we won't claim any other further claim from each other in the future apart from this above mentioned terms and conditions.

7. The petitioner/accused undertakes to honor the above mention cheques issued by her to discharge her liability without failure.

Therefore they humbly pray this Hon'ble Court may be pleased to consider their submissions in this joint memo of compromise and pass order according to law and thus render justice."

4. In view of the above, I am inclined to grant anticipatory bail to the petitioner.

Thus, from a mere reading of the above, it is clear that anticipatory bail was granted to Vijayalakshmi, in view of the Mediation Report dated 04.08.2017, pursuant to the Memo of Compromise dated 28.07.2017.

3. Now, Malavika has filed the present application for cancellation of anticipatory bail granted to Vijayalakshmi on the short ground that, the two cheques of Rs.5 lakhs each that were given by Vijayalakshmi to Malavika have been dishonoured and that Vijayalakshmi had not complied with the terms of the Memo of Compromise. Malavika has filed an affidavit, wherein, she has stated as follows:

"8. I submit that subsequently the accused had informed that she has deposited money in my bank and on verification I find out that she had deposited on Rs.2,50,000/- (Rupees two lakhs fifty thousand only) out of 5,00,000/- (Rupees five lakhs only). I submit that when I deposited the cheque for a sum of Rs.10,00,000/- (Rupees ten lakhs only) in my bank at Chennai and that same was returned to my bank on the ground of insufficient funds. I submit that the accused with the intention to cheat me had deliberately allowed the cheque to dishonor. Further based on the promise she had requested this Hon'ble Court to allow the petition and the petition was allowed."

4. This Court ordered notice on Vijalakshmi. Vijayalakshmi appeared before this Court on 20.11.2017 and engaged Mr.R.K.Ramaiah, Advocate, to represent her. Copies of the petition and typed set of papers were furnished to Mr.R.K.Ramaiah, Advocate and the matter was posted for filing counter of Vijayalakshmi to 04.12.2017.

5. On 04.12.2017, learned counsel for Vijayalakshmi sought some more time and therefore, the matter was adjourned to 06.12.2017. On 06.12.2017, Vijayalakshmi was present and the learned counsel informed this Court that Vijayalakshmi is ready to deposit a sum of Rs.2,50,000/- into the account of Malavika immediately. Learned counsel for Vijayalakshmi also submitted that Vijayalakshmi has Malavika's Bank Account Number, etc., and that if a day's time is granted, Vijayalakshmi will show her *bona fides* by depositing the amount. Therefore, the matter was adjourned to 08.12.2017. On 08.12.2017, Vijayalakshmi did not even comply with the undertaking given by her that she will deposit Rs.2,50,000/- into Malavika's account. In such view of the matter, orders were reserved.

6. On a reading of the FIR, it is seen that Vijayalakshmi was provided shelter and food for three days during the Chennai floods in December 2015 by Malavika and thus, they became friends. Taking advantage of their friendship, Vijayalakshmi gave a business proposal and collected a total sum of Rs.35 lakhs over a period of time, but had not invested the amount in any business. Realising that Vijayalakshmi had cheated her, Malavika lodged a complaint, based on which, FIR was registered in Cr.No.16 of 2017 on 30.03.2017 under Sections 420, 120-B, and 506(i) IPC against Vijayalakshmi.

7. This Court had granted anticipatory bail to Vijayalakshmi only on the strength of the Mediation Report dated 04.08.2017 and the Memo of Compromise dated 28.07.2017. When admittedly Vijayalakshmi had not complied with the terms of the Mediation Report, the benefit of anticipatory bail cannot be extended to her.

In the result, this petition is allowed and the anticipatory bail granted to Vijayalakshmi, vide order 11.08.2017, stands cancelled.

-sd/-
22/12/2017

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

2 THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH-II EDF-III,
GREATER CHENNAI POLICE
VEPERY, CHENNAI.

3 THE ASSISTANT REGISTRAR
TAMILNADU MEDIATION AND CONCILIATION CENTRE,
HIGH COURT, MADRAS

+1 CC to M/S.C.A.THEAGARAJAN Advocate on payment of necessary
charges SR.NO. 23228

CRL OP.24289/2017

Date :22/12/2017

RD 26/12/2017