

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.07.2017

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :18.07.2017

PRONOUNCED ON :26.07.2017

CrI.OP No.18094 of 2012

and

M.P.No.1 of 2012

P.Moorthy

..

Petitioner

Vs

P.Balusamy

..

Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order dated 11.07.2012 passed in Cr.M.P.No.7582 of 2011 in S.T.C.No.4336 of 2011 on the file of the Judicial Magistrate Court No.1, Tiruppur.

For Petitioner

:Mr.K.Govi Ganesan

For Respondent

:Mr.H.Rajasekar

No appearance

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ORDER

This Criminal Original Petition has been filed under Section 482 of Cr.P.C., to set aside the order dated 11.07.2012 passed in Cr.M.P.No.7582 of 2011 in S.T.C.No.4336 of 2011 on the file of the Judicial Magistrate Court No.1, Tiruppur.

2. The short facts of this case is that the respondent herein filed a Private Complaint against the petitioner under Section 200 Cr.P.C in S.T.C.No.4336 of 2011 on the file of the Judicial Magistrate Court No.1, Tiruppur for the alleged offence under Section 138 of Negotiable Instruments Act and the same is pending. Since no summons whatsoever was served on him he was not aware about the pendency of the case against him. The petitioner submits that the Court below issued NBW to secure his presence and pursuant to that he was arrested and produced before the Court below on 11.07.2012 and he filed a Bail Application in CrI.M.P.No.7582 of 2012 under Section 436 of Cr.P.C on the same date and the Court below passed the following order viz:-

"The accused arrested and produced before this Court in a bailable Warrant issued against him for the alleged offence u/s 138 of N.I Act and the warrant issued against the accused is bailable in nature. Hence the petition is allowed and the accused is ordered to be released on bail. The bail is granted on condition that the accused shall execute bond for Rs.5,000.00 each with two sureties for like sum and further condition to deposit 50% of the cheque amount in this Court within 15 days from today".

3. Further, the learned counsel for the petitioner has submitted that in obedience of the orders of the Court below he has duly executed the bond and furnished two sureties and come out on bail and the other condition that he shall deposit 50% of the cheque amount in the Court is highly unjust and unsustainable. The case was at initial stage only and hence there was no necessity to impose such condition.

3. Heard Perused records.

4. The respondent herein P.Balusamy filed a Private Complaint under Section 200 Cr.P.C which was taken on file as S.T.C.No.4336 of 2011 by the Judicial Magistrate Court No.1, Tiruppur for the alleged offence under Section 138 of Negotiable Instruments Act for a sum of Rs.3,00,000/- As the petitioner herein who is an accused has not appeared before the Judicial Magistrate Court No.I, Tiruppur NBW was issued and pursuant to the same, he was arrested and produced before the Judicial Magistrate and which in CrI.M.P.No.7582 of 2012 filed under Section 436 of Cr.P.C. The trial Court has granted bail on furnishing surety and further condition to deposit 50% of the cheque amount in this Court within 15 days from the date of the order. The second portion of order is under challenged.

5. The learned counsel for the petitioner has submitted that the case is only at initial stage and for non-servicing of summons, he could not appear before the Court, resulted in issuance of non-bailable warrant. However, along with the bail order, he was directed to deposit 50% of the cheque amount.

6. On consideration of facts and circumstances of the case, this Court is of the considered view that directing the accused to deposit 50% of the cheque amount even before the entering upon the defence is deprecated.

7.Considering the stage of the S.T.C.No.4336 of 2011, directing to deposit 50% of the cheque amount is found to be onerous conditions and hence, the same is vacated and stands modified as Rs.10,000/- to be deposited within a period of twelve weeks from the date of receipt of a copy of this order.

8.In this view of the matter, this Criminal Original Petition is allowed as indicated above. The order passed by the Judicial Magistrate in CrI.M.P.No.7582 of 2012 is set aside and stands modified as stated above. Consequently, connected Miscellaneous Petition is closed.

26.07.2017

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Index:Yes/No

Internet:Yes/No

To

1.The Judicial Magistrate Court No.1, Tiruppur.

2. The Public Prosecutor,
High Court, Madras.

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RMT.TEEKAA RAMAN,J.,

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Pre-delivery Judgment in
Crl.OP No.18094 of 2012 and
M.P.No.1 of 2012

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