



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.16914 of 2017

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V.Mahesh,
No.17, North Andal Street,
Trichy-2.

... Petitioner

Vs.

Chinnathami

... Respondent

PRAYER: Criminal Original Petition filed under Section 439(1)b of the Criminal Procedure Code, to modify the condition order dated 17.11.2017 made in Crl.M.P(MD).No.3848 of 2017 on the file of the Principal Sessions Court, Trichirappalli in so far as imposing the condition to pay the sum of Rs.1,90,000/- by the petitioner.

For Petitioner : Mr.B.Jammel Arasu
For Respondent : No appearance

O R D E R

This petition has been filed by the petitioner under Section 439(1) b of the Criminal Procedure Code, to modify the conditional order dated 17.11.2017 made in Crl.M.P(MD).No.3848 of 2017 on the file of the Principal Sessions Court, Trichirappalli, insofar as imposing the condition to pay a sum of Rs.1,90,000/- by the petitioner is concerned.

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

3.The case of the petitioner is that the petitioner borrowed a sum of Rs.1,90,000/- from the respondent and issued a cheque in favour of the respondent. When the respondent presented the cheque, the same got returned, with an endorsement 'insufficient funds'. Therefore, the respondent has filed a complaint under Section 138 of Negotiable Instrument Act before the Judicial Magistrate No.III, Trichy in C.C.No.243 of 2003 and subsequently the Judicial Magistrate issued a non-bailable warrant against the petitioner and he was arrested and remanded to judicial custody by the learned Judicial Magistrate No.III, Trichy on 06.11.2017 and the earlier bail petition was dismissed by the said lower Court.

4.Thereafter, the learned counsel for the petitioner filed a bail application before the Principal Sessions Court, Trichirappalli and the said Sessions Court granted bail on 17.11.2017. However, directed the petitioner to deposit the cheque amount of Rs.1,90,000/- to the credit of this case Crime Number on or before 18.12.2017.



5. Against the order of the learned Principal Sessions Judge, Trichirappalli, the petitioner filed a criminal original petition before this Court on 06.12.2017. When the matter was taken up for hearing on 08.12.2017, this Court has ordered notice as well as private notice to the respondent returnable by 14.12.2017, however, the said notice was returned with an endorsement "Insufficient Address" .

6. The learned counsel for the petitioner would submit that the private notice was taken to the address, shown by the respondent, in the complaint filed before the lower Court.

7. On perusal of the order passed by the learned Principal Sessions Judge, Trichirappalli would show that the petitioner was ordered to be released, on bail, with a condition to deposit a sum of Rs.1,90,000/-. No doubt, the Courts below have such a power to impose the condition while entertaining the bail application under Section 438 of Cr.P.C. However, a careful consideration of the provisions of Sections 437(3) and 438(3) Criminal Procedure Code show that the conditions are imposed, primarily with a view to ensure availability of the accused during investigation, enquiry or trial and his non-interference with the course of justice. Other conditions, which the Court may think fit, can also be imposed to meet the ends of justice. On perusal of the Sessions Court order, the condition imposed by the learned Principal Sessions Judge, Trichirappalli to pay the cheque amount of Rs.1,90,000/- is an onerous one.

8. The similar issue has been raised before the Hon'ble Apex Court in the case of Sandeep Jain Vs. State of Delhi, reported in (2000)2 SCC 66, wherein, a direction of the Metropolitan Magistrate, to deposit Rs.2 lacs apart from furnishing of a bond of Rs.50,000/- with two solvent sureties as a condition precedent for bail, was held to be unreasonable.

9. In the case of Sheikh Ayub V. State of M.P (2004) 13 SCC 457, wherein, the Supreme Court deleted the direction to deposit a sum of Rs.2,50,000/-, which was the amount allegedly misappropriated by the accused.

10. Having regard to the above, this Court is of the view that the condition imposed by the learned Principal Sessions Judge, Trichirappalli in his order, dated 17.11.2017 in CrI.M.P(MD). No.3848 of 2017, while granting bail to the petitioner, to deposit a sum of Rs.1,90,000/-, is onerous and unreasonable and hence, it is set aside.

<https://hcservices.courts.gov.in/hcservices>
11. Accordingly, this Criminal Original Petition is allowed. The petitioner is directed to comply the other conditions imposed by the learned Principal Sessions Judge, Trichirappalli and



further directed to appear before the learned Judicial Magistrate Court No.III, Trichirappalli, for every hearing without fail.

Sd/-
Assistant Registrar(CO)

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/True Copy/

Sub Assistant Registrar

To

- 1.The Principal Sessions Judge,
Trichirappalli.
- 2.The Judicial Magistrate No.III,
Trichirappalli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.B.Jammal Arasu, Advocate SR.No. 36397

Cr1.O.P.No.16914 of 2017

msa

JM/SV MMS/SAR 4/20.12.2017/3P/5C