

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.25662 of 2018

S.Shaziyabanu

... Petitioner

Vs.

1.The State
rep. by the Inspector of Police,
R-3, Police Station,
Ashok Nagar,
Chennai.

2.M.Vasanth

3.M.Sumathy

... Respondents

Criminal Original Petition filed under Section 439(2)
Cr.P.C. praying to cancel the bail order granted on 31.08.2018
in Crl.M.P.No.5171 of 2018 on the file of the learned XVII
Metropolitan Magistrate Court at Saidapet, Chennai.

For Petitioner : Mr.K.Gowthaman
For R1 : Mrs.M.Prabhavathi
Additional Public Prosecutor
For R2 & R3 : No appearance

O R D E R

This petition has been filed seeking to cancel the bail
granted to the respondents 2 and 3 in Crl.M.P.No.5171 of 2018 by
the XVII Metropolitan Magistrate, Saidapet, Chennai by an order
dated 31.08.2018.

2 The learned counsel for the petitioner would submit
that she already lodged a complaint alleging that the defacto
complainant is running a hotel business in the name of Hotel Zam
Zam, Saidapet, Chennai. The respondents 2 and 3 were introduced
the petitioner to one Meena and Sakravarthy in the month of
March 2018. They approached him for redemption of mortgage of
their property ad measuring an extent of 1090 sq.ft comprised in
Survey No.212/1, situated in Ambattur, Chennai, which was
mortgaged with the Union Bank of India, it came for auction.
Therefore, they approached the defacto complainant to redeem the

mortgage. In which the defacto complainant paid the entire loan amount and redeemed the said property on condition that the said property shall be sold out to the defacto complainant by the respondents 2 and 3.

3 After redemption of the said property, the defacto complainant entered into a sale agreement with the respondents 2 and 3. Thereafter, without any knowledge of the defacto complainant, the respondents 2 and 3 mortgaged the property with private person and received a sum of Rs.15,00,000/-. Hence, the complaint lodged by the petitioner.

4 The learned counsel for the petitioner would submit that in this regard, the first respondent arrested the respondents 2 and 3 on 30.08.2018 and while they were remanding judicial custody on 30.08.2018, before the XVII Metropolitan Magistrate, Saidapet, Chennai. The respondents 2 and 3 paid a sum of Rs.6,00,000/- and for remaining amount of Rs.6,00,000/-, they issued a cheque bearing No.000063, dated 16.09.2018 to the defacto complainant. They were granted bail on condition that the said cheque amount should be realised, even without remanding to the judicial custody. Thereafter, they failed to honor the cheque and absconded from the interrogation. The learned XVII Metropolitan Magistrate, Saidapet, Chennai granted bail only on condition that the said cheque should be realised in favour of the defacto complainant. But, the said cheque was not honored by them and was dishonored by reason that insufficient funds. Therefore, the petitioner sought for canceling the bail granted for the respondents 2 and 3.

5. Despite, this Court ordered private notice to the respondents 2 and 3 and said notice duly served on them even they did not appear in person or engaged any counsel. Therefore, the name of the respondents in the printed and listed today. Even then, no one has appeared on behalf of the respondents 2 & 3.

6. The learned Additional Public Prosecutor would submit that the condition imposed by the XVII Metropolitan Magistrate, Saidapet, Chennai is not complied with by the respondents 2 and 3. Insofar as the other conditions are concerned complied with.

7 Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the first respondent.

8 It is seen that the petitioner/defacto complainant lodged a complaint and the same was registered in Crime No.440 of 2018, on the file of the respondent for the offences under Section 420 and 406 IPC. In this regard, the first respondent while arresting the respondents 2 and 3 on 30.08.2018, they paid a sum of Rs.6,00,000/- and also issued a cheque bearing No.000063, dated 16.09.2018 having account in City Union Bank,

Ambattur branch, Chennai for a sum of Rs.6 lakhs in favour of the petitioner/defacto complainant. While the learned XVII Metropolitan Magistrate, Saidapet, Chennai granting bail to the respondents 2 and 3 imposed conditions that the said cheque should be realised. The conditions imposed by the Court is as follows:

"5.Affidavit of Defacto Complainant filed. As per affidavit on 30.08.2018 a sum of Rs.6,00,000/- paid. Remaining sum of Rs.6,00,000/- the petitioner argued that issued a cheque in favour of Defacto Complainant bearing cheque No.000063 600054030:00785. Hence this Court issue notice to APP and police. Reply Received. The cheque amount should be realised. Hence considering the affidavit of Defacto Complainant this Court inclined to grant bail to the petitioners on the following conditions:

(i) The petitioners/Accused shall execute a bond for a sum of Rs.5,000/- with two sureties to the like sum each. (One document, one blood relative sureties)

(ii) The petitioners/ Accused shall appear before the respondent/police daily at 10.00 a.m. For until further orders.

9 On instructions of the respondents 2 and 3, the petitioner/defacto complainant deposit the said cheque for a collection in their bank in ICICI on 18.09.2018, which was returned for the reason that the "funds insufficient". Therefore, one of the condition imposed by the learned XVII Metropolitan Magistrate is not complied with the respondents 2 and 3, insofar as the other conditions are concerned they are complied with. Private notice served and they also did not present and did not engage any counsel to appear on behalf of them.

10 To consider the above facts and circumstances, this Court is inclined to cancel the bail granted to the respondents 2 and 3. Accordingly, this petition is allowed and the bail granted to the respondents 2 and 3 in CrI.M.P.No.5171 of 2018 dated 31.08.2018 is hereby cancelled. The first respondent is directed to secure the accused/respondents 2 and 3 in Crime No.440 of 2018 and take further action against them.
rpl/ksa-2

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The XVII Metropolitan Magistrate,
Saidapet,
Chennai
2. The Inspector of Police,
R-3 Police Station
Ashok Nagar, Chennai.
3. The Public Prosecutor,
High Court of Madras, Chennai.

+1CC To Mr.K.Gowthaman, Advocate, SR.No.87733

CRL.O.P.No.25662 of 2018

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