

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 12.03.2018****CORAM:****THE HONOURABLE MR. JUSTICE R.PONGIAPPAN****Cr1.O.P. (MD) .No.16784 of 2017****WEB COPY**

L.Pandian ...Petitioner/ Defacto Complainant

Vs.

1. The Inspector of Police,
Subramaniapuram Police Station,
Madurai City.Respondent/Respondent

2.R.Subbu Lakshmi ...Respondent/Accused No.1

PRAYER: Criminal Original Petition filed under Section 439(2) of the Criminal Procedure Code, to cancel the bail granted by the learned Judicial Magistrate No.IV, Madurai in Cr.M.P.No.4665 of 2017 vide order dated 26.10.2017.

For Petitioner :Mr.R.Anand

For R-1 :Mr.A.Robinson
Government Advocate
(Cr1.Side)

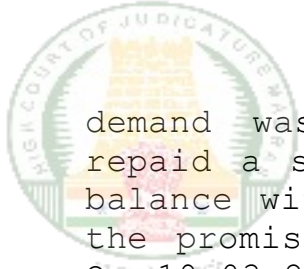
For R-2 :Mr.M.Pitchaimuthu

O R D E R

The petitioner herein is the defacto complainant in Crime No.432 of 2015 on the file of the Subramaniapuram Police Station, Madurai City. He filed this application seeking cancellation of bail granted by the learned Judicial Magistrate No.IV, Madurai in Cr.M.P.No.4665 of 2017 vide order dated 26.10.2017, which was granted in favour of the second respondent herein, who is the accused no.1 in the above said crime.

2.The case of prosecution is as follows:

2(i) Admittedly on 06.09.2012, the second respondent herein and her husband availed a loan for a sum of Rs.28 lakhs from the petitioner herein for which, by way of security, both of them had executed a pro-note, cheque as well as title deed of their house to the petitioner with an assurance that if the loan is not repaid, the petitioner is entitled to take appropriate action against the property. Meanwhile on 25.09.2012, the husband of the second respondent died. So, the petitioner herein demanded the second respondent for repayment of the entire loan. After the



demand was made, on 26.09.2012 itself, the second respondent repaid a sum of Rs.15 lakhs and assured that she will repay the balance within three months from the above said date. Thereafter, the promise made by the second respondent was not complied with. On 19.03.2014, based on the request made by the petitioner, the second respondent made an assurance in a stamp paper, in which, she assured that the balance sum of Rs.13 lakhs shall be paid on or before 30.04.2014. Even after executing the said undertaking letter, the second respondent has not repaid the said loan amount. Thereafter, the petitioner herein filed a private complaint before the learned Judicial Magistrate No.IV, Madurai, in which, he made allegation against the second respondent that in the undertaking letter given by the second respondent, she put a forged signature. The said complaint was forwarded by the learned Judicial Magistrate No.IV, Madurai to the respondent police, with a direction to register a case according to law. Thereafter, the case has been registered against the second respondent in Crime No.432 of 2015 for the offences punishable under Sections 294(b), 420, 465, 468 and 506(i) I.P.C.,

3.After registration of the case, the second respondent herein, apprehending danger with regard to the arrest, has approached this Court in CrI.O.P(MD).No.5790 of 2015 and sought for the relief of anticipatory bail. At the time of hearing of the application, she had voluntarily given an undertaking that she would pay the sum of Rs.13 lakhs to the petitioner and to that effect an affidavit has also been filed and as a result, she was granted anticipatory bail in CrI.O.P(MD).No.5790 of 2015, dated 27.10.2015 with condition that the second respondent has to pay the above said sum on or before 28.02.2016. After getting the order, she has not complied with the direction issued by this Court. Thereafter, to extend the period, i.e., for settling the loan due, she filed CrI.M.P(MD).No.1844 of 2016 and the time is extended till 29.04.2016.

4.Since the promise made by the second respondent has not been complied, the petitioner herein moved an application before this Court for cancellation of anticipatory bail granted in her favour in CrI.M.P(MD).No.5155 of 2016, dated 27.10.2015. After perusing the documents, this Court cancelled the anticipatory bail already granted in favour of the second respondent and thereafter, the second respondent herein has filed a special leave petition before the Hon'ble Apex Court in S.L.P.(CrI) No.3611 of 2017 on 26.04.2017, wherein, the following direction has been given:

"The Special Leave Petition is disposed of with the direction that if the petitioner surrender before the trial Court within a period of two weeks from today and moves an application the day advance notice to the public prosecutor, the trial court may consider and decide the application for bail as far as possible on the same date, in accordance with law" .



5. So, according to the direction of the Hon'ble Apex Court, it is necessary to dispose of the application filed by the second respondent within a day subject to the condition if the petitioner surrender before the trial Court. However, the second respondent has not surrendered before the learned Judicial Magistrate No.IV, Madurai, due to which, the second respondent herein was arrested on 10.10.2017 and subsequently, she was remanded to the judicial custody. Thereafter, after completion of 15 days, the learned Judicial Magistrate has granted bail to the second respondent as per the order passed in Cr.M.P.No.4665 of 2017. Now, the petitioner herein approached this Court in CrI.O.P(MD).No.16784 of 2017, for cancelling the said order passed by the learned Judicial Magistrate No.IV, Madurai.

6. The learned Government Advocate (CrI.Side), on instructions, submitted that as of now, investigation in this case is almost over and charge sheet will be filed within few days. Admittedly, the case of the petitioner is that the second respondent and her husband availed a loan only after executing necessary pro-notes and title deeds. The allegations levelled against the second respondent is that she fraudulently put her signature, with an intention to cheat the petitioner. Now, considering that aspect, it is the duty of the prosecution to prove the signature found in the disputed documents belongs to the second respondent or not. It is not easy to the petitioner to allege that the signature found in the undertaking affidavit is a forged one. In the above situation, if really the second respondent is having dishonest intention, there is no necessity for giving pro-notes and title deeds to the petitioner herein. So, the entire facts and circumstances shows that the petitioner herein have a chance to approach the Civil Court in order to recover the balance due amount. Apart from that, the Hon'ble Apex Court did not give any specific direction for cancelling the bail or for securing the accused or for confirming the order passed by this Court. Since the second respondent was under custody for 15 days and also considering the fact that investigation in this case is also over, this Court is not inclined to entertain this petition.

7. Therefore, for the reasons stated above, the order passed by the learned Judicial Magistrate No.IV, Madurai, does not warrant interference at the hands of this Court. Accordingly, the Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar(CO)

/True copy/



To

1. The Judicial Magistrate No.IV,
Madurai.
2. The Inspector of Police,
Subramaniapuram Police Station,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High court,
Madurai.

MSA

VB/SKN/RSK/SAR4/10.04.2018/4P/4C

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