



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 31.10.2018
CORAM:
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.[MD].No.6488 of 2017
and

Crl.M.P.(MD)Nos.4288 and 4289 of 2017

Renold ...Petitioner / Accused
Vs.

A.Selvaraj ... Respondent / Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records relating to C.C.No.233 of 2015, pending on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi and to quash the said proceedings as against the petitioner herein.

For Petitioner : Mr.R.Vijaya Kumar
For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed, seeking to quash the proceedings in C.C.No.233 of 2015, pending on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi.

2.This Court directed the learned counsel appearing for the petitioner to take private notice during the last occasion and the private notice has been sent to the respondent and he has received it on 26.10.2018. A proof of service has also been filed before this Court. In spite of receipt of the notice, there is no appearance for the respondent.

3.The learned counsel appearing for the petitioner would submit that the cheque was returned on 12.08.2015. Therefore, notice was issued by the respondent and the present complaint has been filed for an offence under Section 138 Negotiable Instruments Act. The cheque amount is Rs.50,000/- (Rupees Fifty Thousand Only).

4.The learned counsel appearing for the petitioner would further submit that pursuant to the order passed by this Court on 06.06.2017, the petitioner has deposited the entire cheque amount of Rs.50,000/- to the credit of C.C.No.233 of 2015 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi. In spite of the deposit of the entire cheque amount, the respondent has not come forward to complete the proceedings and it is unnecessarily kept pending.



5.The learned counsel appearing for the petitioner drew the attention of this Court the judgment of the Hon'ble Supreme Court in the case of M/s.Meters and Instruments Private Limited and another Vs. Kanchan Mehta reported in 2018-1-L.W. (Crl.) 464. The relevant portion of the judgment reads as follows:-

18.From the above discussion following aspects emerge:

i) Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under the Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

iii) Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused."

6.This Court is of the considered view that the judgment of the Hon'ble Supreme Court can be applied to the facts and circumstances of the present case. The respondent has not appeared before this Court either in person or through counsel. The respondent is also not taking any steps to close the proceedings before the Court below. Therefore, this Court deems it fit to compound offence in exercise of its power under Section 482 Cr.P.C.

7.The petitioner has already deposited a sum of Rs.50,000/- before the Court below, pursuant to the order of this Court and according to the learned counsel appearing for the petitioner, the said amount is lying in deposit. The petitioner is further directed to deposit a sum of Rs.7,500/- (Rupees Seven Thousand and Five Hundred Only) towards interest and costs to the credit of C.C.No.233 of 2015, on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi, within a period of two weeks from the date of receipt of a copy of this order. On such deposit being made by the petitioner, the respondent is entitled to withdraw the same. The offence is compounded and the proceedings in C.C.No.233 of 2015, pending on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi is hereby quashed.



8. In the result, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

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Sub Assistant Registrar (CS-III)

To

1. The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Thoothukudi.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr. R. Vijaya Kumar, Advocate, SR.No.94363

Cr1.O.P. [MD].No.6488 of 2017
31.10.2018

MYR
ES/PM/SAR 3/05.12.2018/3P/4C