IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.10690 of 2019

P.Venkatachalapathy .. Petitioner

.Vs.

Sri Yoga Traders,
Rep.by its Proprietrix,
C.Mathankumar,
S/o.Chinnasamy Chittiyar,
19E, Salem Main Road,
Koogaiyur Road Bus Stop,
Chinnasalem (post) & (Tk),
Villupuram Dt-606 201. ..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order of 3rd Additional District and Sessions Court, Kallakurichi in CMP No.117 of 2019 in C.A.No.78 of 2018 by order dated 05th day of March 2019, and to permit the petitioner to withdraw the 20% compensation amount which was deposited by the accused in C.C.No.107/2017, on the file of the Judicial Magistrate (Fast Track Court), Kallakurichi.

For Petitioners: Mr.P.Saravanan

For Respondent : M/s.V.Sasirekha

ORDER

This Criminal Original Petition has been filed against the order passed by the Court below dismissing the petition filed by the petitioner u/s 148(3) of the Negotiable Instruments Act, to permit the petitioner to withdraw the 20% compensation amount that has been deposited by the respondent.

2. It is seen from records that the petitioner had initiated proceedings against the respondent for an offence

under Section 138 of the Negotiable Instruments Act. The trial Court after considering the entire evidence and on the facts and circumstances of the case convicted the respondent and sentenced him to undergo 1 year simple imprisonment and to pay a fine of Rs.17,62,730/- and in default to undergo 3 months simple imprisonment. The respondent filed an appeal against the judgment in Crl.A.No.78 of 2018. Along with the appeal, the respondent also filed a petition for suspension of sentence. The Appellate Court suspended the sentence imposed by the trial Court by imposing certain conditions. One of the conditions was that the respondent should deposit 20% of the fine amount.

3. The respondent complied with the said condition and deposited 20% of the fine amount. The appeal was pending and the Appellate Court was awaiting the records from the trial Court.

4. In the meantime, the petitioner moved a petition under Section 148(3) of the Negotiable Instruments Act, seeking to withdraw the fine amount that was deposited by the respondent. This petition was dismissed by the Court below on the ground that the petitioner can always get back the amount if he succeeds in the appeal.

5. The learned counsel for the petitioner submitted that the Court below did not give any reasons as to why the claim made by the petitioner is rejected and the Court below did not exercise its discretion by properly applying its mind to the facts of the case and the order of the Court below goes against the very spirit of Section 148(3) of the Negotiable Instruments Act.

6. The learned counsel for the petitioner in order to substantiate his arguments relied upon the judgment in Sri Santhosh J .Vs. Sri V Narasimha Murthy made in CRP No.425 of 2018 dated 18.02.2019.

7. Per contra, the learned counsel for the respondent submitted that the Court below has properly applied its amount and has rejected the petition filed by the petitioner. The learned counsel further submitted that if the petitioner is directed to take away the amount deposited and ultimately the respondent succeeds in the appeal, it will become very difficult to recover the amount from the petitioner. The learned counsel concluded the arguments by submitting that this Court can fix some time limit for completion of the appeal.

8. This Court has carefully considered the submissions made on either side.

9. The legislature thought it fit to introduce Section 148 into the Negotiable Instruments Act, in order to ensure that the payee of the dishonored cheque who spends a considerable time and resources in Court proceedings, must be able to realise some amount atleast during the pendency of the appeal. It is true that the discretion is vested with the Appellate Court either to permit or not permit the complainant to withdraw the amount, depending on the facts and circumstances of the case. However, while exercising such a discretion, the same must be supported by reasons which must in turn reflect the application of mind. The Appellate Court cannot exercise the discretion in an arbitratory manner without giving any reasons. By doing so, the spirit behind Section 148 of the Negotiable Instruments Act will be defeated.

10. It will be relevant to take note of the judgment cited by the learned counsel for the petitioner.

11. The judgment relied by the learned counsel for the petitioner is the judgment of the Karnataka High Court in Sri Santhosh J. .Vs. Sri V Narasimha Murthy made in CRP No.425 of 2018 dated 18.02.2019. The relevant portions of the judgment is extracted hereunder:

> "13. It is also relevant to quote here itself Section 148 of the Act which reads as under:-
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> "148: Power of Appellate Court to order payment pending appeal against conviction: (1) Notwithstanding anything contained in the code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court:
>
> PROVIDED that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under Section 143A.
>
> (2) The amount referred to in sub- section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.
>
> (3) The Appellate Court may direct the release

of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

PROVIDED that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

14. On close reading of Section 148 of the Act that the appellate Court may order the accused to deposit a minimum of 20% of the fine amount or the compensation awarded by the trial Court and if the said amount is deposited within 60 days from such order, the said Court may direct to release the amount in deposit made by the accused to the complainant during the pendency of the matter. Proviso of the said Act says that while releasing such amount, the complainant must be directed to repay the said amount in the event of acquittal of the accused with interest at the bank rate which was prevailing during the said period.

15. On plain reading of the said Section it indicates that it is the appellate Court which has got power to order for release of such amount which has been deposited by the accused.

In that light, it is necessary to refer to the statement of objections and reasons of enactment of Section 148 of the Act, which read as under:-

"The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque. Such delays compromise the sanctity of cheque transactions.

2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely:--

(i) to insert a new section 143A in the said Act to provide that the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent. of the amount of the cheque; and

(ii) to insert a new section 148 in the said Act so as to provide that in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial court.

4. The Bill seeks to achieve the above objectives"

17. On perusal of the reasons for enacting Section 148 of the Act, it discloses that cheque bounce cases are pending because of dishonour of

> cheques and there are delaying tactics of unscrupulous drawers of dishonours due to easy filing of appeals and obtaining the stay and in order to avoid injustice caused to the complainant and to provide a relief and to discourage frivolous and unnecessary litigations and to save the time of the Court, the proposed amendment has been made.
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> 18. In that light, the trial Court is directed to release 20% of the amount in deposit made by the accused under Section 148 of the Act with condition that if the accused is acquitted in this case, the complainant has to repay the said amount of 20% so released in favour of him with interest at the bank rate as on the date of release. The complainant has to execute an indemnity bond with two sureties for the like sum to the satisfaction of the trial Court to the effect that in the event of acquittal of the accused, he shall indemnify the said amount with interest at the bank rate as on the date of release of the amount".

12. The Hon'ble Supreme Court in the judgment in Surender Singh Deswal @ Co.S.S.Deswal and Others .Vs. Virender Gandhi made in C.A.Nos.917-944 of 2019 dated 29.05.2019, has categorically held that Section 148 of the Negotiable Instruments Act, will have a retrospective effect and will apply to all the pending proceedings.

13. The order passed by the Court below does not reflect iany application of mind and the Court below has mechanically dismissed the petition without assigning any reasons. Therefore, the order of the Court below requires interference by this Court.

14. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that the petitioner can be permitted to withdraw a sum of Rs. 1,50,000/- from the amount deposited by the respondent, as a condition for suspension of sentence. The petitioner shall execute an indemnity bond with sureties for a like some to the satisfaction of the trial Court to the effect that in the event of acquittal of the accused, he shall indemnify the said amount of Rs.1,50,000/- with interest at the rate of 7.5% p.a.

15. In the result, the order passed by the Court below in CMP No.117 of 2019 dated 05.03.2019, is hereby set aside and this criminal original petition is allowed to the extent indicated herein above. The Appellate Court is directed to

complete the proceedings in C.A.No.78 of 2018, within a period of three months from the date of receipt of copy of the order.
Kp

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The III Additional District and Sessions Judge
   III Additional District and Sessions Court,
   Kallakurichi.

2. The Judicial Magistrate (Fast Track Court),
   Kallakurichi.

+1cc to Mr.P.Saravanan, Advocate, SR.No.53820
+1cc to M/s.V.Sasi Rekha, Advocate, SR.No.54275

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Kak(03/07/2019)