

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Twelfth day of November Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL MISCELLANEOUS PETITION No.16109 of 2019

IN CRL.R.C.NO.1424 of 2017

H.UBAIDULLA

[PETITIONER/APELLANT/ACCUSED]

Vs

S. ELANGO

[RESPONDENT/COMPLAINANT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To direct the Learned Judicial Magistrate No.II, Cuddalore, to refund the amount of Rs.1,00,000/- to the petitioner, which was deposited on 22.01.2018 in C.C.No.121/2010 based on this Hon'ble Court passed order in Crl.M.P.No.14054 and 14055/2017 in Crl.R.C.No.1424/2017 dated 11.01.2018.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.K.KANNAN, Advocate for the petitioner, and of M/S.E.SATHYARAJ, Advocate on behalf of the Respondent, the court made the following order:-

- 1.This Criminal Miscellaneous Petition has been filed by the Petitioner/Accused, seeking to direct the learned Judicial Magistrate No.II, Cuddalore, to refund the amount of Rs.1,00,000/- to the petitioner, which was deposited on 22.01.2018, in C.C.No.121/2010, based on the order of this Court, dated 13.01.2018, made in Crl.M.P.No.14054/2017 in Crl.R.C.No.1424/2017.
- 2.This court heard the submissions made by the learned counsel for the Petitioner and also perused both the impugned Judgments.
- 3.In and by both the impugned judgement of the Trial Court, the Petitioner/Accused was convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo Six Months Simple Imprisonment and to pay an amount of Rs.5,00,000/- [Rupees Five Lakhs Only] as compensation to the complainant within two months, in default to undergo Two Months Simple Imprisonment.

4.The learned counsel for the Petitioner would submit that the Lower Court has convicted the accused in C.C.No.121/2010, dated 07.10.2014 and the Trial Court had confirmed the same in Crl.A.No.58/2014, dated 03.07.2017. Against the confirmation of conviction, the petitioner filed criminal revision petition in Crl.R.C.No.1421/2017 and at the time of admission of the revision petition, the petitioner moved a petition in Crl.M.P.No.14054/2017, seeking suspension of sentence imposed by the Trial Court and also filed Crl.M.P.No.14055/2017, seeking to exempt the petitioner from surrendering before the Trial Court. Pursuant to the judgment of the Trial Court and as confirmed by the Appellate Court, this Court by order dated 13.11.2017, had suspended the sentence with the direction to deposit a sum of Rs.1,00,000/- before the Trial Court and that in due compliance of the same, the petitioner had deposited Rs.1,00,000/- before the Trial Court on 22.01.2018. He would further submit that subsequently, the criminal revision petition had come up for final hearing and this Court by allowing the revision by order dated 12.02.2019, set aside the orders passed by the Courts below namely C.C.No.121/2010 and Crl.A.No.58/2014. After, criminal revision was allowed, the petitioner had approached the Trial Court, seeking for return of the deposited amount of Rs.1,00,000/- made pursuant to the orders passed in Crl.M.P.No.14054/2017 and 14055/2017 in Crl.R.C.No.1424/2017, dated 13.11.2017. However, the Trial Court had returned the petition with the following endorsement:

" The petitioner filed a petition to pray the deposited amount of Rs.1,00,000/- to be refund. But, Appellate Court not given any direction to the deposit amount returned to the petitioner. Hence the petition is returned."

5.The learned counsel for the petitioner would submit that the respondent/complainant has not filed any Special Leave Petition against the order of acquittal made in Crl.R.C.No.1424/2017 and the petitioner having been acquitted is entitled for return of the deposited amount of Rs.1,00,000/- made in Crl.M.P.No.14054/2017 and 14055/2017 in Crl.R.C.No.1424/2017, dated 13.11.2017. However, the Trial Court had erroneously returned the petition stating that no direction have been passed by this Court, for return the amount.

6.During the pendency of the revision, the petitioner has filed the petition for suspension of sentence and exemption from surrendering and this Court has passed a conditional order, the petitioner has complied with the conditional order. Now, that the revision has been allowed and the conviction and sentence of the Courts below having been set aside and the petitioner having been acquitted the petitioner is entitled for refund of the deposit made pursuant to the conditional order.

7.In view of the same, the criminal miscellaneous petition stands allowed and the learned Judicial Magistrate No.II, Cuddalore is directed to refund the amount of Rs.1,00,000/- [Rupees One Lakh Only] to the petitioner, deposited in C.C.No.121/2010, dated 22.01.2018, based on the order of this Court, dated 13.01.2018, made in Crl.M.P.No.14054/2017 in Crl.R.C.No.1424/2017.

With the above observation, the criminal miscellaneous petition is ordered accordingly.

-sd/-
12/11/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
NO.II, CUDDALORE.

2 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE. [FOR INFORMATION]

3 THE SESSIONS JUDGE,
CUDDALORE DIVISION, CUDDALORE.

+1 C.C. to M/S.K.KANNAN Advocate on payment of necessary charges
SR.NO.94564

Order
in
CRL MP.16109/2019
in
CRL.RC.No.1424/2017

सत्यमेव जयते Date :12/11/2019

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