



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Original Jurisdiction)

Tuesday, the Seventeenth day of September,
Two Thousand and Nineteen

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PRESENT

The Honourable Mr. Justice B.PUGALENDHI

CRL MP (MD) . No.2745 of 2019
in
CRL. A (MD) No.626 of 2007

Palmer ... Petitioner/Respondent

Vs

Girija ... Respondent/Appellant

Prayer :-

This Criminal Miscellaneous Petition filed under Section 482 of Cr.P.C, praying that this Honourable Court may be pleased to modify the condition imposed as against the petitioner to deposit the fine amount in Crl.A(MD)No.626 of 2007 on 27.10.2018.

Prayer in Crl.A(MD) No.626 of 2007:

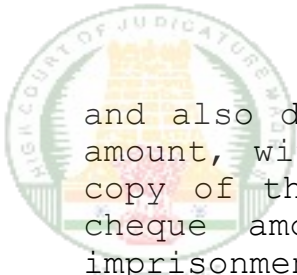
Criminal Appeal filed under Section 374 of Criminal Procedure Code to call for the records in C.C. No.3 of 2005 on the file of the learned Judicial Magistrate No.1, Kuzhithurai, dated 15.10.2007 and set aside the same and allow the Appeal against Acquittal.

ORDER:- This Criminal Miscellaneous Petition coming upon for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.T.Thirupathy, Advocate for the Petitioner and of Mr.T.Lajapathi Roy For Respondent, this Court made the following order:

This petition has been filed for modification of the order passed by this Court in Crl.A.(MD).No.626 of 2007, dated 27.10.2018.

2.The petitioner is an accused in C.C.No.3 of 2005, wherein he was tried for the offence under Section 138 r/w 142 of the Negotiable Instruments Act and the Trial Court, by order dated 15.10.2007 in C.C.No.3 of 2005, passed an order of acquittal in favour of the petitioner.

3.As against the order of acquittal, the respondent complainant has preferred an appeal in C.A.(MD).No.626 of 2007. While deciding the appeal, this Court, by order dated 27.10.2018, allowed the appeal and imposed a fine of Rs.5,000/- to the respondent / Accused



and also directed the respondent / Accused to pay the compensation amount, within a period of one month from the date of receipt of a copy of this order, under Section 357(c) Cr.P.C ie., equal to the cheque amount of the appellant, in default to undergo simple imprisonment for three months.

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4.As against the order dated 27.10.2018, the present petition has been filed by the petitioner / Accused on the ground that the respondent / complainant has initiated a civil proceedings with regard to the cheque amount in O.S.No.95 of 2007 on the file of the Subordinate Judge, Kulidurai, and the said suit is referred to Lok Adalath and this petitioner / Accused has paid cheque amount during the proceedings, but this fact has not elicited before this court when the appeal was set aside.

5.Per contra, the learned counsel appearing for the respondent / complainant would contend that the order passed by this court is barred either to alter or modify the order under Section 362 Cr.P.C. The learned counsel appearing for the respondent / complainant has also relied upon the judgment of the Honourable Supreme court in the case of **State of Punjab Vs. Davinder Pal Singh Bhullar and others** wherein para No.26 is as follows:

"26.There is no power of review with the Criminal Court after judgment has been rendered. The High Court can alter or review its judgment before it is signed. When an order is passed, it cannot be reviewed. Section 362 Code of Criminal Procedure is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and is disentitled to entertain a fresh prayer for any relief unless the former order of final disposal is set aside by a Court of competent jurisdiction in a manner prescribed by law. The Court becomes functus officio the moment the order for disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. There is also no provision for modification of the judgment.

Moreover, the prohibition contained in Section 362 Code of Criminal Procedure is absolute after the judgment is signed, even the High Court in exercise of its inherent power under Section 482 Code of Criminal Procedure has no authority or jurisdiction to alter/review the same."



6.As rightly pointed out by the learned counsel appearing for the respondent / Complainant that Section 362 Cr.P.C is barred either to alter or modify the order passed by this court.

7.In view of the proviso under Section 362 Cr.P.C., the petition is not maintainable before this Court. Accordingly, this criminal miscellaneous petition is dismissed.

Sd/-

Assistant Registrar()

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Judicial Magistrate No.1,
Kuzhithurai.

+1CC TO MR.T.LAJAPATHI ROY, Advocate Sr. No.87515

+1CC TO MR.T.THIRUPATHY, Advocate Sr. No. 87320

ORDER DATED : 17/09/2019

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ORDER

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CRL MP (MD) . No.2745 of 2019
in

CRL A (MD) No.626 of 2007

dks (CO)

TR(22.11.2019) 3P 4C