



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **V.PARTHIBAN**

Cr1.R.C. (MD)No.385 of 2019

and

Cr1.M.P(MD)No.5683 of 2019

WEB COPY

Thavamony Stephen Jeyaraj

: Petitioner/Respondent

Vs.

Muthukrishnan

: Respondent/ Petitioner

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for the records pertaining to the order passed in Cr.M.P.No.3852 of 2019 dated 30.04.2019 on the file of the learned Principal Sessions Judge, Tirunelveli and set aside the same as illegal.

For Petitioner

: Mr.G.Aravinthan

For Respondent

: Mr.K.Sudalaiyandi

O R D E R

The present criminal revision petition has been filed by the complainant questioning the order passed by the Principal Sessions Court dated 30.04.2019 in Cr.M.P.No.3852 of 2019 in C.A.No.62 of 2019.

2.While entertaining appeal against the conviction, the lower appellate Court has directed to deposit a sum of Rs.4,00,000/- within 60 days as against the cheque amount of Rs.43,00,000/-. Being aggrieved by the direction to deposit Rs.4,00,000/- by the Sessions Court, the complainant is before this Court.

3.The learned counsel for the petitioner would submit that as per the amendment to the provisions of the Negotiable Instruments Act, if an appeal is filed, a minimum of 20% deposit has to be made. But unfortunately, the Sessions Court in this case has merely ordered Rs.4,00,000/- out of Rs.43,00,000/- which was the cheque amount.

4.At this, the learned counsel for the respondent would submit that the revision is not maintainable under Section 397 Cr.P.C, since it is an interlocutory order. Section 397(2) Cr.P.C clearly provides for prohibition of revision against Interlocutory Order passed by the Sessions Court. Therefore, the present revision petition is not maintainable in law and liable to be dismissed.



5.This Court considered the legal submissions made on behalf of the petitioner as well as the respondent.

6.From the order passed by the learned Sessions Judge, it could be seen that the same is not in the nature of interlocutory order, but it is an intermediate order. Once an order is passed seeking deposit of Rs.4,00,000/- pending disposal of the appeal, there is a final determination of right as to the deposit of the amount ordered by the Sessions Judge. Therefore, in this circumstances, this Court is of the view that the revision is maintainable. Since neither the order passed by the Sessions Judge is final nor the same is interlocutory and in such case, the revision become entertainable.

7.The learned counsel for the respondent relied on the the decision of the Hon'ble Supreme Court of India **(2017)3 MLJ (Crl.) 616 (SC) [Girish Kumar Suneja vs. C.B.I]**. The said decision of the Hon'ble Supreme Court of India referred to may not be applicable to the factual matrix of the present case, since the statutory right to have 20% deposit as provided under the Negotiable Instruments Act has been determined by the order passed by the Sessions Judge disposing of the criminal miscellaneous petition filed by the accused. In such event, this Court has no hesitation of concluding that the revision petition is maintainable and also the Court below has grossly erred in ordering Rs.4,00,000/- instead of ordering 20% of minimum deposit which is mandatory under the amended provisions of the Negotiable Instruments Act.

8.In the above said circumstances, this Court is of the view that the order passed by the trial Court is in error and unsustainable in law and contrary to the specific provisions of the Negotiable Instruments Act and therefore, the same is liable to be rejected. The revision is therefore, allowed and the respondent/accused is directed to deposit 20% of the cheque amount under the Head of C.C.No.87 of 2013 before the learned Judicial Magistrate, Valliyoor within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)



To

- 1.The Principal Sessions Judge, Tirunelveli.
- 2.The Judicial Magistrate, Valliyoor.

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- +1 CC to Mr.K. SUDALIYANDI, Advocate SR-85431.
- +1 CC to Mr.G.ARAVINTHAN, Advocate SR-85588.

**ORDER MADE IN
CrI.R.C. (MD) No.385 of 2019
and
CrI.M.P (MD) No.5683 of 2019
Dated:-
05.09.2019**

CS (03.10.2019) 3P 5C