

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Eleventh day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice P. RAJAMANICKAM

CRIMINAL MISCELLANEOUS PETITION No.2566 of 2020

IN CRL.RC.NO.206 OF 2020

RAJESHWARI DEVADASS

[PETITIONER]

vs

K.THAVAMANI

[RESPONDENT]

Petition praying that in the circumstances stated therein the High Court will be pleased to modify the condition of deposit of 50 percent amount ordered in Crl Mp No. 1505/2020 dated 06.02.2020 Crl RC NO. 206/2020 of 2020 on the facts of the case pending disposal of the main criminal revision petition.[CRL.MP.NO.2566/2020]

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S. C.RAVI, Advocate for the petitioner , the court made the following order:-

This Petition has been filed by the Petitioner/Accused to modify the order passed by this Court in Crl. M.P. No. 1505 of 2020 in Crl. R.C. No. 206 of 2020 dated 06.02.2020.

2. The Respondent herein has filed a private complaint under Section 138 of the Negotiable Instruments Act, 1881, stating that the Petitioner herein has issued a cheque for a sum of Rs.20,00,000/- (Rupees Twenty Lakh only) to discharge her liability, and when the said cheque was presented before the Bank for encashment, the same was dishonoured on the ground of 'insufficient funds'. Based on the said private complaint, the Judicial Magistrate (Fast Track Court), Coonoor has taken the case on file as C.C. No. 6 of 2015, and after full trial, convicted the Petitioner herein and sentenced her to undergo 1 year simple imprisonment and also directed the Petitioner herein to pay a sum of Rs.20,00,000/- (Rupees Twenty Lakh only) as compensation under Section 357(3) of the Code of Criminal Procedure, 1973, within a period of 2 months, failing which the Petitioner herein shall undergo 3 more months simple imprisonment. Aggrieved by the same, the Petitioner herein has filed an appeal in C.A. No. 12 of 2019 on the file of the Sessions Judge of the Nilgris at Udahagamandalam. The learned Sessions Judge by the Judgment dated 13.01.2020 has dismissed the said appeal confirming the findings of the Trial Court. However, he reduced the imprisonment from 1 year to 6 months. In respect of compensation, he has confirmed the order of the Trial Court. Feeling aggrieved, the Petitioner has filed the

present Criminal Revision Petition. She has also filed Crl. M.P. No. 1505 of 2020 seeking suspension of sentence. This Court by the order dated 06.02.2020 after considering the arguments advanced by the learned Counsel for the Petitioner, suspended the sentence by imposing certain conditions. One such condition was that the Petitioner shall deposit 50% of the cheque amount, viz., Rs.10,00,000/- (Rupees Ten Lakh only) before the Trial Court within 4 weeks from the date of receipt of copy of the said order.

3. The present Petition has been filed to modify the aforesaid condition.

4. The learned Counsel for the Petitioner has submitted that the Petitioner is not liable to pay any amount to the Respondent. He further submitted that in the complaint and also in the evidence, the Respondent has not stated that on which date, the Petitioner herein has borrowed the amount. He further submitted that without taking into consideration of the aforesaid facts, the Trial Court has convicted the Petitioner and the Appellate Court also has mechanically confirmed the same. He further submitted that the Petitioner is a woman, aged about 65 years and she is not having means to deposit a sum of Rs.10,00,000/- (Rupees Ten Lakh only) as directed by this Court, and hence, he prayed to reduce the said amount.

5. Per contra, the learned Counsel for the Respondent has submitted that even though Section 138 of the Negotiable Instruments Act, 1881, empowered the Magistrate to direct the Accused to pay twice the amount of cheque amount as compensation, the Trial Court by showing leniency, directed the Petitioner to pay only the cheque amount as compensation. Further, it has awarded only 1 year simple imprisonment. Taking into consideration of the fact that the Petitioner is a woman, the Appellate Court has reduced the imprisonment from 1 year to 6 months. He further submitted that though the transaction took place in the year 2014, for the past 6 years, the Petitioner has not paid even a single pie to the Respondent. Taking into consideration of the aforesaid facts, this Court by the order dated 06.02.2020 has directed the Petitioner to deposit 50% of the cheque amount, viz., Rs.10,00,000/- (Rupees Ten Lakh only) before the Trial Court within 4 weeks from the date of receipt of a copy of the said order, but so far the Petitioner has not complied with the said condition, and therefore, he strongly opposed to modify the aforesaid condition.

6. A perusal of the order dated 06.02.2020 passed by this Court shows that after taking into consideration of the submissions made by the learned Counsel for the Petitioner, this Court has passed the order directing the Petitioner to deposit 50% of the cheque amount within 4 weeks from the date of receipt of a copy of the said order. Hence, this Court does not find any merit for modifying the said condition. However, taking into consideration of the submissions made by the learned Counsel for the Petitioner that the Petitioner is a woman, aged about 65 years and she is not able to mobilize a sum of Rs.10,00,000/- (Rupees Ten Lakh only) within the time limit fixed by

this Court, this Court is inclined to extend the aforesaid period, directing the Petitioner to deposit a sum of Rs.5,00,000/- (Rupees Five Lakh only) before the Trial Court within a week from the date of receipt of a copy of this order, and the balance amount of Rs.5,00,000/- (Rupees Five Lakh only) shall be deposited before the Trial Court within 3 weeks thereafter.

7. With the aforesaid modifications, this Petition is disposed of.

-sd/-

11/03/2020

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,
FAST TRACK COURT[MAGISTERIAL LEVEL]
COONOR

2 THE SESSIONS JUDGE
MAGISTRATE AT UDHAGAMANDALAM

3 THE PRINCIPAL SESSIONS JUDGE
UDHAGAMANDALAM

+1 C.C. to M/S. C.RAVI Advocate on payment of necessary charges
SR.NO. 4835

Order

in
CRL MP.2566/2020

IN CRL.RC.NO.206 OF 2020

Date :11/03/2020

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