

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2020

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

Crl.O.P.No.29550 of 2019

and

Crl.M.P.No.15944 of 2019

Dr.Kanchana Kamalanathan

W/o, Kamalanathan,

No.347/147, Bangalore road,

Krishnagiri Taluk & District.Petitioner/ Appellant

-Vs-

B.Selvam

S/o, Byrappan,

Kundarapalli Village,

Ramapuram Post,

Krishnagiri Taluk & District. Respondent/ Respondent

Prayer:Criminal Original Petition filed under section 482 of Criminal Procedure Code, to setaside the order dated 19.07.2019 passed in Crl.M.P.No.663 of 2019 in Crl.A.No.01 of 2019 on the file of the Principal Sessions Judge, Krishnagiri.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.T.Sundaravadhanam

O R D E R

The Criminal Original Petition is directed against the order dated 19.07.2019 passed in Crl.M.P.No.663 of 2019 in Criminal Appeal No.1 of 2019 on the file of the Principal Sessions Court, Krishnagiri.

2. The respondent has preferred the complaint against the petitioner under section 138 of the Negotiable Instruments Act and the same had been taken on file in S.T.C.No.2132 of 2015 on the file of the Judicial Magistrate Court No.II, Krishnagiri.

3. After trial, the trial court found the petitioner guilty under section 138 of the Negotiable Instruments Act and sentenced her to undergo simple imprisonment for one year and also to pay a fine of Rs.10,000/- , in default to undergo simple imprisonment for two months.

4. Challenging the conviction and sentence imposed on her, the petitioner/accused has preferred the Criminal Appeal No.01 of 2019 on the file of the Principal Sessions Court, Krishnagiri.

5. Pending the abovesaid Criminal Appeal, the respondent has preferred an application under section 148 of the Negotiable Instruments Act, directing the petitioner/accused to deposit 20% of the cheque amount into the Court, pending disposal of the abovesaid appeal. As could be seen from the impugned order, it is found that the petitioner/accused has not preferred any counter in the abovesaid application, though she was represented by an advocate.

6. The Court below by way of the impugned order, directed the petitioner/accused to deposit 20% of the cheque amount on or before 08.08.2019 into the court, failing which, directed that the Appeal shall stand dismissed. Challenging the same, the present Criminal Original Petition has been laid.

7. It is contended by the petitioner's counsel that as per section 148 of the Negotiable Instruments Act, which came into force on 01.09.2018, by virtue of the Amendment Act 20 of 2018, the appellate court is competent to direct the petitioner only to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial court and in such view of the matter, according to him, the Court below has erred in directing the petitioner/accused to deposit 20% of the cheque amount in the application preferred by the respondent/complainant under section 148 of the Negotiable Instruments Act.

8. Section 148 of the Negotiable Instruments Act reads as follows:

"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 143-A.

(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."

9. On a reading of section 148 of the Negotiable Instruments Act, it is evident that pending appeal, the appellate court is competent to direct the appellant/accused to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial court. In such view of the matter, the impugned order passed by the Court below directing the petitioner/accused to deposit 20% of the cheque amount is found to be erroneous and liable to be set aside, particularly when the petitioner/accused has been directed by the trial court to pay only a fine of Rs.10,000/- alone and also to undergo simple imprisonment for one year.

10. In the light of the abovesaid discussions, the impugned order dated 19.07.2019 passed in Crl.M.P.No.663 of 2019 in Criminal Appeal No.01 of 2019 on the file of the Principal Sessions Court, Krishnagiri is set aside and instead the petitioner/accused is directed to deposit 20% of Rs.10,000/- , imposed on her by the trial court as fine, to the credit of Criminal Appeal No.1 of 2019 on the file of the Principal Sessions Court, Krishnagiri within 60 days from the date of receipt of a copy of this order.

11. It is submitted by the respondent's counsel that since he has not been paid any amount by the petitioner/accused during the pendency of the case in the trial court and this Court has only directed her to deposit 20% of the fine amount in this Criminal Original Petition, he prayed that a suitable direction may be given to the Court below to dispose of the Criminal Appeal preferred by the petitioner/accused within a reasonable time as may be fixed by this Court. The abovesaid request of the counsel for the respondent is not seriously opposed by the petitioner's / accused counsel.

12. Considering the pandemic situation in vogue due to covid-19 and the restricted functioning of the courts in the state, in the light of the above scenario, I deem it fit to direct the Court below to dispose of the Criminal Appeal No.01 of 2019 as expeditiously as possible.

13. Accordingly, the Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

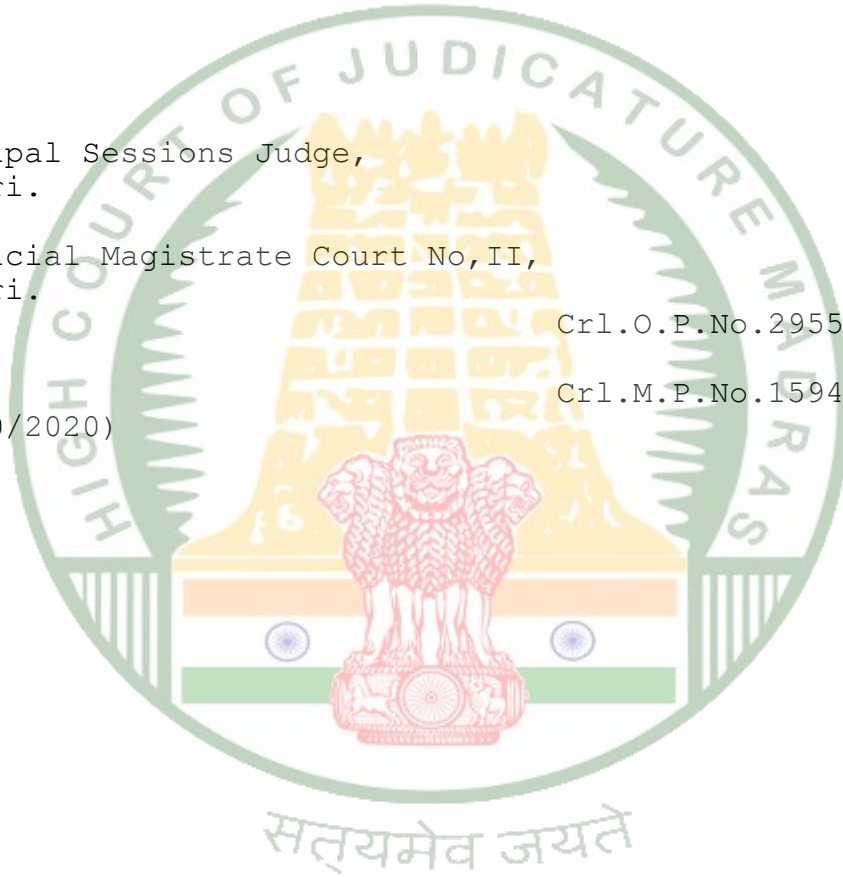
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To

The Principal Sessions Judge,
Krishnagiri.

2.The Judicial Magistrate Court No,II,
Krishnagiri.

Cr1.O.P.No.29550 of 2019
and
Cr1.M.P.No.15944 of 2019

A.SK(06/10/2020)



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