

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.No.33707 of 2019
and Crl.M.P.Nos.18589 & 18591 of 2019

N.Narayanan
Director,
Pyramid Saimira Theatre Limited
NO.6, Ist Floor, Viswakamal,
245, R.K.Mutt Road,
Mylapore, Chennai - 600 004.Petitioner

Vs

Axis Bank Limited,
Represented by its
Authorised Signatory,
Having its Office at
Ist Floor, Karumuthu Nilayam,
No.192, Anna Salai,
Chennai - 600 002.Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order dated 28.11.2019 passed in Crl.M.P.No.20418 of 2019 in Crl.M.P.No.16001 of 2019 in Crl.A.No.286 of 2019 pending on the file of the learned XVI Additional City Civil Court, Chennai.

For Petitioner : Mr.R.Sagadevan

For Respondent : Mr.Balamurali

For Mr.Shivakumar & Suresh

ORDER

This Criminal Original Petition has been filed praying to set aside the order dated 28.11.2019 passed in Crl.M.P.No.20418 of 2019 in Crl.M.P.No.16001 of 2019 in Crl.A.No.286 of 2019 pending on the file of the learned XVI Additional City Civil Court, Chennai.

2. Heard Mr.R.Sagadevan, learned counsel appearing for the petitioner, Mr.Balamurali, learned counsel appearing for the respondent.

3. The petitioner is the third accused in C.C.No. 2840 of 2010 on the file of the learned Metropolitan Magistrate, (Fast Track Court-2) Egmore. The said case has been filed by the respondent as against the petitioner and two others under the provisions of 138 Negotiable Instruments Act (herein after referred to as "NI Act").

4. After an elaborate trial, the learned Metropolitan Magistrate, (Fast Track Court-2), Egmore, came to the conclusion that the petitioner and two others are found guilty for the offence under Section 138 of NI Act and accordingly by the judgment dated 27.04.2019, the petitioner was convicted under Section 138 of NI Act and sentenced to undergo simple imprisonment for six months, further directed to deposit a sum of Rs.80,00,000/- as a compensation to the respondent by all the accused.

5. Challenging the above said order, the petitioner filed an appeal in Crl.A.No.286 of 2019 before the learned Principal Sessions Judge, Chennai. Along with the said appeal, the petitioner filed a miscellaneous petition in Crl.M.P.No.16001 of 2019 praying to suspend the sentence awarded by the trial Court. While at the time of disposing the said petition, by an order dated 14.08.2019, the learned Principal Session Judge, Chennai, suspended the sentence imposed upon the petitioner with the condition that the petitioner shall deposit 20% of the cheque amount to the credit of C.C.No.2840 of 2010 on the file of the Metropolitan Magistrate Court, (Fast Track Court-2), Egmore.

6. Aggrieved over the same, the petitioner filed another one miscellaneous petition in Crl.M.P.No.20418 of 2019 before the XVI Additional City Civil Court, Chennai praying to modify the said condition in respect of the deposit of 20% of the cheque amount. The learned XVI Additional Judge, City Civil Court, Chennai, by an order dated 28.11.2019 disposed the above said petition by modifying the order dated 14.08.2019 and directed the petitioner to deposit 10% of the cheque amount to the credit of C.C.No.2840 of 2019. Only in the said circumstances, the petitioner is before this Court with the present Criminal Original Petition.

7. The learned counsel appearing for the petitioner would contend that the cheque alleged to be issued by the petitioner is only for a sum of Rs.40,00,000/- and during the pendency of the said case in C.C.No.2840 of 2010, the petitioner entered into compromise and repaid a sum of Rs.14,00,000/- before the Lok Adalath and the details of payment are as follows :-

i) Rs.1,00,000/- Demand Draft No.555283
drawn at Corporation Bank, Chennai George Town
Branch dated 10.06.2011 paid on 10.06.2011.

ii) Rs.6,00,000/- Demand Draft dated 05.08.2011 paid on 05.08.2011.

iii) R.2,00,000/- Demand Draft No.546440 drawn at Corporation Bank, Chennai George Town Branch dated 09.09.2011 paid on 09.09.2011

iv) Rs.3,00,000/- Demand Draft drawn at Lakshmi Vilas Bank, Nungambakkam Branch dated 06.01.2012 paid on 06.01.2012.

v) Rs.2,00,000/- Demand Draft No.348382 drawn at Lakshmi Vilas Bank, Nungambakkam Branch dated 30.03.2012 paid on 30.03.2012.

8. In this regard, the learned counsel appearing for the petitioner further would contend that since already 24% of the cheque amount has been paid to the respondent, directing the petitioner to deposit 10% of the cheque amount is unnecessary for disposing the Criminal Appeal. Accordingly, he prayed to set aside the impugned order dated 28.11.2019 by allowing this Criminal Original Petition.

9. Per contra, the learned counsel appearing for the respondent would fairly concede that earlier during the time of settlement talks, the petitioner repaid a sum of Rs.14,00,000/- towards the loan availed by him along with the accused 1 & 2. However, upon relaying the judgment of the Hon'ble Apex Court reported in (2020) 2 SCC 514 in the case of Surinder Singh Deswal and ors Vs. Virender Gandhi and anr, wherein our Hon'ble Apex Court in the similar case directed the accused to deposit 20% of the cheque amount as compensation within a period of 90 days, he prayed for dismissal of this present petition.

10. Now considering the rival submission made by the learned counsel appearing on either side, in the judgment relied upon by the learned counsel appearing for the respondent, it seems that during the pendency of the trial no payment was made by the accused to the complainant. But here it is a case, the learned counsel appearing on either side would admit that during the pendency of the trial, the petitioner paid a sum of Rs.14,00,000/- towards discharge of the due which has already been received by the respondent.

11. Therefore, on complying the condition to deposit 10% of the cheque amount will increase the quantum of repayment to 34% of the cheque amount. As of now, the appeal is pending on the file of the XVI Additional City Civil Court, Chennai, to find out whether the conviction and sentence imposed on the petitioner are correct or not. Under such circumstances directing the petitioner to deposit additional sum is not necessary. However, it is appropriate to direct the learned Principal Sessions Judge, Chennai to dispose the appeal within the time stipulated by this Court.

12. In the light of the above discussions, this Court is inclined to set aside the order dated 28.11.2019 passed by the learned XVI Additional Judge, City Civil Court, Chennai. Accordingly by setting aside the order dated 28.11.2019 passed by the learned XVI Additional City Civil Court, Chennai, the petition filed by the petitioner in CrI.M.P.No.20418 of 2019 in CrI.M.P.No.16001 of 2019 in CrI.A.No.286 of 2019 is allowed. Further the learned XVI Additional City Civil Court, Chennai, is directed to dispose the appeal in CrI.A.No.286 of 2019 within a period of eight weeks from the date of receipt of copy of this Order. Both the parties are directed to co-operate for disposing the appeal.

13. With the above directions, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts
To

1. The XVI Additional Judge,
City Civil Court, Chennai.
2. The Principal Sessions Judge,
City Civil Court, Chennai.
3. The Metropolitan Magistrate,
(Fast Track Court-2)
Egmore.

+1cc to M/s.Shivakumar, Advocate in SR.NO..40025

CrI.O.P.No.33707 of 2019 and
CrI.M.P.Nos.18589 & 18591 of 2019

vsn-ii(CO)
rv(07/01/2021)

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