



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)Nos.1991 and 1992 of 2020
and
Crl.M.P. (MD)Nos.999 and 1002 of 2020

K.S.Rajan ... Petitioner in both the petitions /
Respondent / Accused

-vs-

V.Siththarthan ... Respondent in both the petitions /
Petitioner / Complainant

PRAYER in Crl.O.P. (MD)No.1991 of 2020: Petition filed under Section 482 of the Criminal Procedure Code to allow this petition and set-aside the interim compensation order passed in Crl.M.P.No.1428 of 2019 in S.T.C.No.2 of 2019 on the file of the Judicial Magistrate, Periyakulam dated 06.08.2019.

PRAYER in Crl.O.P. (MD)No.1992 of 2020: Petition filed under Section 482 of the Criminal Procedure Code to allow this petition and set-aside the interim compensation order passed in Crl.M.P.No.1437 of 2019 in S.T.C.No.1 of 2019 on the file of the Judicial Magistrate, Periyakulam dated 06.08.2019.

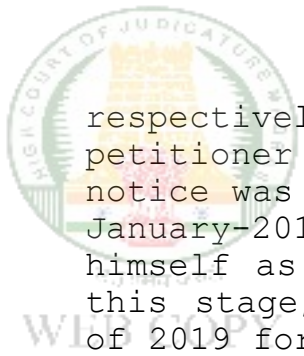
For Petitioner : Mr.C.K.M.Appaji

For Respondent : No appearance
(in both these petitions)

O R D E R

The petitioner in both these Criminal Original Petitions are figuring as accused in STC No.2 of 2019 and S.T.C.No.1 of 2019 on the file of the learned Judicial Magistrate, Periyakulam. The respondent Siththarthan is the complainant in both these cases. Both these private complaints have been instituted for the offences under Section 138 of Negotiable Instruments Act.

2.The case of the complainant is that two cheques issued by the petitioner herein for a sum of Rs.15 Lakhs and Rs.10 Lakhs



respectively were dishonoured on presentation and that the petitioner herein did not pay the cheque amount even after statutory notice was issued. Both these complaints were instituted sometime in January-2019. In both these cases, the complainant had examined himself as P.W.1 and the case is posted for cross examination. At this stage, the complainant filed Cr.M.P.Nos.1437 of 2019 and 1428 of 2019 for directing the accused to pay 10% of the cheque amount as interim compensation. The learned Trial Magistrate by the impugned orders dated 06.08.2019 allowed both these petitions and directed the accused to pay 10% of the cheque amount as interim compensation. Questioning the same, these two Criminal Original Petitions have been filed.

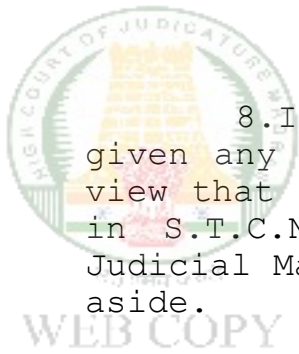
3.The respondent / complainant V.Siththarthan has been served through Court notice but there is no appearance on his behalf. In the cause list also his name is printed.

4.I heard the learned counsel for the petitioner and carefully went through the contents of the impugned order.

5.The learned Trial Magistrate had taken note of the fact that Section 143 (A) of the Negotiable Instruments Act, 1881 was added vide Act 20 of 2018 which came into effect from 2018. The complaints on hand were filed in January, 2019. The learned Trial magistrate rightly came to the conclusion that Section 143 A is very much applicable to the case on hand. But then, the learned Trial Magistrate after holding that Section 143 A is applicable, has straightway allowed both the petitions filed by the complainant.

6.The learned Trial magistrate has not assigned any reasons as to why he is ordering payment of interim compensation to the complainant. Merely because the statutory provision confers certain power on the Court, it does not mean it can be straight away exercised. The learned Trial Magistrate ought to have given reasons for exercise of the said power.

7.There can be cases in which the liability of the accused is fairly obvious even on a prima facie basis. For instance, the complainant could have transferred his moneys to the account of the accused. The cheques in question presumably have been issued towards discharge of his contractual liability. May be in such a case, subject to the final outcome of the case, direction for payment of interim compensation can be made. In the case on hand, there is only the enclosures of the cheques. No other material has been putforth by the complainant herein. The accused completely denied receipt of any amount from the complainant. In such cases, where there is a complete denial of liability and there is nothing on record to support the case of the complaint except the cheque in question, it must be unsafe to take recourse to Section 143A of Negotiable Instruments Act.



8. In the case on hand the learned Trial Magistrate has not given any reason for exercising this power. I am therefore of the view that the impugned orders in Crl.M.P.Nos.1428 and 1437 of 2019 in S.T.C.Nos.2 and 1 of 2019 respectively on the file of the Judicial Magistrate, Periyakulam dated 06.08.2019, deserve to be set aside.

9. Accordingly, the impugned orders in Crl.M.P.Nos.1428 and 1437 of 2019 in S.T.C.Nos.2 and 1 of 2019 respectively on the file of the Judicial Magistrate, Periyakulam dated 06.08.2019, are set aside and these Criminal Original Petitions stand allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The Judicial Magistrate,
Periyakulam.

+2 CC to M/s.C.K.M.APPAJI, Advocate (SR-10585[F] dated 09/03/2020)

Crl.O.P. (MD) Nos.1991 and 1992 of 2020

05.03.2020

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SDS (21.08.2020) 3P-4C