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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.18744 of 2020 and
Crl.M.P.No.7685 of 2021

T.Reddy Prasad

... Petitioner

Vs.

E.A.Dhamodharan

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.M.P.No.33 of 2019 in S.T.C.No.80 of 2018 pending on the file of the Fast Track Judge [Magistrate Level], at Thiruvallur and set aside the order dated 19.02.2020 in C.M.P.No.33 of 2019 in S.T.C.No.80 of 2018.

For Petitioner : Mr.G.A.Thiyagarajan

For Respondent : Mr.S.Thiruvengadam

ORDER

This Criminal Original Petition has been filed to set aside the order, dated 19.02.2019, made in C.M.P.No.33 of 2019 in S.T.C.No.80 of 2018 passed by the learned Fast Track Judge (Magistrate Level), Thiruvallur/trial Court.

2.The petitioner/accused is facing trial on the complaint filed by the respondent for offence under Section 138 of the Negotiable Instruments Act, 1888, in S.T.C.No.80 of 2018 before the trial Court. During the pendency of the trial, the respondent has filed a petition in C.M.P.No.33 of 2019 in S.T.C.No.80 of 2018 to direct the petitioner to pay 20% of the cheque amount to him. The trial Court, by order, dated 19.02.2019, directed the petitioner to pay 20% of the cheque amount to the respondent as per the amendment in Section 143 of the Negotiable Instruments Act, 1881, as against which the present petition.



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3.The learned counsel for the petitioner submitted that the petitioner never borrowed any sum from the respondent much less the alleged cheque amount of Rs.6,65,000/-. During the year 2014, the petitioner entrusted three cheques to his younger brother for the purpose of arranging the loan through third party financier. Since his brother could not arrange loan, the petitioner received back two cheques and the balance cheque has been misused by the respondent and a false complaint has been lodged. During the pendency of the proceedings, the respondent filed a petition under Section 143A of the Negotiable Instruments Act, 1881. The trial Court without considering the factual aspects of the case and the denial made by the petitioner, ordered to deposit 20% of the cheque amount on 19.02.2019. The learned counsel further submitted that this Court in the case of "L.G.R.Enterprises and Ors. Versus P.Anbazhagan reported in MANU/TN/4768/2019" following the decision of the Hon'ble Apex Court in the case "Surinder Singh Deswal @ Col. S.S.Deswal and Versus Virender Gandhi in Criminal Appeal Nos.917-944 of 2019" had given guidelines with regard to ordering interim compensation to the complainant. None of the guidelines have been followed by the trial Court while deciding the petition. Hence, he prayed to set aside the order of the trial Court.

4.The learned counsel for the respondent submitted that the petitioner borrowed loan for Rs.6,65,000/- for his business viz., Sri Devi Covering and also for his family expenses during the month of May 2017 and agreed to pay 12% interest per month. In discharge of the said liability, the petitioner issued cheque during the month of July 2018. When the cheque was presented for encashment, the same was dishonoured for the reason that 'Insufficient Fund'. The respondent issued notice to the petitioner, but the same was returned with endorsement 'no such person'. Hence, he lodged a complaint before the trial Court under Section 138 of the Negotiable Instruments Act, 1881. The trial Court finding prima facie case in favour of the respondent, had taken the complaint on file as S.T.C.No.80 of 2018 and issued summon to the petitioner. During the pendency of the proceedings, the trial Court on the petition filed by the respondent under Section 143A of the Negotiable Instruments Act, 1881, ordered 20% interim compensation to the respondent, which cannot be termed to be arbitrary and hence, he opposed this petition.

5.This Court considered the rival submissions and perused the materials available on record.

6.It is seen that the respondent after following the statutory principle, had filed the complaint before the trial Court on 19.09.2018 and thereafter, the case was called on 25.10.2018 and 19.10.2018. On 29.10.2018, the sworn statement of



the respondent recorded and found prima facie case for commission of offence under Section 138 of the Negotiable Instruments Act, 1881 and issued summons to the accused and posted the case on 29.11.2018. On 29.11.2018, when the case was taken on hearing, the postal cover of return of summon with endorsement 'No Such Person' produced and the trial Court ordered private notice and posted the case on 31.12.2018. On 31.12.2018, the respondent and the petitioner were present, copies were served to the petitioner and the petitioner was questioned under Section 251 Cr.P.C., for which he gave detailed explanation denying his liability. On 13.02.2019, a petition under Section 143A of the Negotiable Instruments Act, 1881 in C.M.P.No.33 of 2019 in S.T.C.No.80 of 2018 came to be filed, wherein on 19.02.2019, the trial Court had passed the order as follows:-

"Heard petitioner counsel. Perused records. As a result, petition is allowed and the respondent/accused is directed to pay the 20% of the cheque amount to the petitioner/complainant as per the amended Act of Section 143A of NI Act, C/o 26/03/2019."

7.From the order the trial Court, it is clear that the trial Court has not recorded any reason as to why directs the petitioner/accused to pay the interim compensation amount to the respondent.

8.This Court in the cases of "L.G.R.Enterprises and Ors. Versus P.Anbazhagan reported in MANU/TN/4768/2019" and "K.S.Rajan Versus V.Siththarthan in Crl.O.P(MD).No.1991 & 1992 of 2020, dated 05.03.2020" had clearly held that the word 'May' in Section 143A of the Negotiable Instruments Act, 1881, gives discretions to the trial Court to direct the accused to pay interim compensation to the complainant. The exercise of discretion must always be supported by reasons, failing which the exercise of discretion will become arbitrary and further, held that the trial Court while exercising its jurisdiction under Section 143A of the Negotiable Instruments Act, it shall record reasons as to why it directs the accused person to pay interim compensation to the complainant. The reasons may be varied. For instance, the accused person would have absconded for a longtime and thereby would have protracted the proceedings or the accused person would have intentionally evaded service for a long time and only after repeated attempts, appears before the Court, or the enforceable debt or liability in a case, is borne out by overwhelming materials which the accused person could not on the face of it deny or where the accused person accepts the debt or liability partly or where the accused person does not cross examine the witnesses and keeps on dragging with the proceedings by filing one petition after another or the accused person absconds and by virtue of a non-bailable warrant he is secured and brought before



the Court after a long time or he files a recall non-bailable warrant petition after a long time and the Court while considering his petition for recalling the non-bailable warrant can invoke Section 143A(1) of the Act. This list is not exhaustive and it is more illustrative as to the various circumstances under which the trial Court will be justified in exercising its jurisdiction under Section 143A(1) of the Act, by directing the accused person to pay the interim compensation of 20% to the complainant. In this case, the trial Court neither followed the statutory provisions nor given any reason as to why directs the accused to pay interim compensation.

9. Thus, the trial Court has not given any reason as to why it is directing the accused person to pay an interim compensation of 20% to the complainant. Hence, the order, dated 19.02.2019, made in C.M.P.No.33 of 2019 in S.T.C.No.80 of 2018 passed by the trial Court is set aside and this Criminal Original Petition, accordingly, allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

10. Considering the case is of the year 2018 and the same has been pending for more than 3 years without any progress, the trial Court is directed to complete the trial within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Fast Track Judge [Magistrate Level],
Thiruvallur.

+1cc to M/s.G.A.Thiyagarajan, Advocate Sr No.43742

Crl.O.P.No.18744 of 2020

SJ (CO)
PR (11/10/2021)