



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2021

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

CrI.O.P.No.33017 of 2019

&

CrI.M.P.No.18215 of 2019

P. Nayagi

... Petitioner/Accused

Versus

D. Murugan

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order in CMP.No.5420 of 2018 in CC.No.323 of 2017, dated 08.03.2019 on the file of Judicial Magistrate, Thirukoilur,

For Petitioner : Mr.M.Subash Pandiyan

For Respondent : Mr. R.Ramalingam

O R D E R

This petition has been filed to set aside the order in C.M.P.No.5420 of 2018 in CC.No. 323 of 2017, dated 08.03.2019 passed by the learned Judicial Magistrate, Thirukoilur.

2. The respondent/complainant filed a private complaint under Section 200 of Cr.P.C., against the petitioner/accused for an alleged offence punishable under Section 138 of the Negotiable Instruments Act, 1881, (hereinafter referred to as the 'N.I. Act') before the learned Judicial Magistrate, Thirukoilur.

3. The case of the respondent/complainant is that the petitioner/accused borrowed a sum of Rs.9,00,000/- to meet out her business expenses and the petitioner agreed to repay the said amount along with interest at the rate of 24% p.a., and thereafter, she failed to repay the said sum. Subsequently, the



accused had issued a post dated cheque bearing No. 747072, dated 26.09.2017 for a sum of Rs.9,00,000/- drawn in favour of State Bank of India, Thiruvannamalai Town Branch, No.138 Big Street, Thiruvannamalai and the same was presented for collection by the respondent herein to M/s.Lakshmi Vilas Bank, Arraganda Nallur, but the cheque was dishonoured with an endorsement "Insufficient Fund", dated 10.10.2017. Thereafter, the respondent/complainant filed a complaint under Section 200 of CrPC before the learned Judicial Magistrate, Thirukoilur, against the petitioner/accused under Section 138 of the Negotiable Instruments Act, 1881.

4. The learned counsel for the petitioner submits that the respondent/de-facto complainant filed CMP.No.5420 of 2018 in C.C.No.323 of 2017 before the Trial Court under Section 357 (3) of Cr.P.C seeking interim compensation. After perusing the records, the Trial Court directed the petitioner/accused to pay 20% of the cheque amount as interim compensation for a sum of Rs.1,80,000/- within 60 days. He further submits that the said amendment of Section 143A of the NI Act, was only prospective effect and not retrospective effect. He further submits that Section 143A is restricted in its operation with effect from 01.09.2018 and not have any retrospective effect. He further submits that this case was filed in the year 2017, hence, the provision of Section 143A of the NI Act is not applicable for the present case.

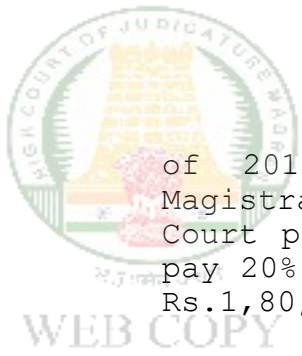
5. The learned counsel for the petitioner has also relied upon the decision in the case of (i) G.J.Raja v. Tejraj Surana in CrI.A.No.1160 of 2019, SLP (CrI) No.3342 of 2019, dated 30.07.2019 by the Hon'ble Apex Court has observed as follows:

"143A, Power to direct interim compensation, (i) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant".

and (ii) Safiya v. Abdul Sathar K.M. and Ors, dated 05.11.2019 by the High Court of Kerala.

6. Heard both side and perused the materials placed on record.

7. On perusal of the records, it is seen that the respondent/complainant filed a complaint against the petitioner/accused under Section 138 of the Negotiable Instruments Act, 1881, r/w Section 200 of CrPC. During the pendency of the Calendar Case, the complainant filed CMP.No.5420



of 2018 in C.C.No.323 of 2017 on the file of Judicial Magistrate, Thirukoilur. After perusing the records, the Trial Court passed an order dated 08.03.2019 directing the accused to pay 20% of the cheque amount as interim relief, which amongst to Rs.1,80,000/- within 60 days.

8. The contention of the petitioner is that the interim compensation was inserted as per Section 143A, based on the provision, the Trial Court directed the petitioner to pay interim compensation. He would further submit that such amendment of Section 143A is only prospective effect from 01.09.2018 and not have any retrospective effect. This case is of the year 2017, for which the provision of Section 143A is not applicable for the present case. Therefore, the trial Court had passed the order erroneously in the petition without following the provisions of Section 143A by amendment Act, 20 of 2018.

9. Considering the above facts and circumstances of the case, the case is of the year 2017 for which, newly inserted Section 143A of the Negotiable Instruments Act with effect from 01.09.2018, is not applicable for the present case. Therefore, the order passed in CMP.No.5420 of 2018 in CC.No. 323 of 2017, dated 08.03.2019 passed by the learned Judicial Magistrate, Thirukoilur, is hereby set aside. Further, the Trial Court is directed to complete the exercise in C.C.No.323 of 2017 on the file of Judicial Magistrate, Thirukoilur, within a period of three months from the date of receipt of a copy of this order.

Accordingly, the Criminal Original Petition is allowed. Consequently, CrI.M.P.No.18215 of 2019 is also closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

pbl

To

1. The Judicial Magistrate,
Thirukoilur.
2. The Public Prosecutor,
Madras High Court, Chennai.

CrI.O.P.No.33017 of 2019

NMI (CO)
SU(22/12/2021)