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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.O.P.No.2404 of 2019

M/s. HDFC Bank Limited
Represented by its
Legal Officer, Tr.Anbarasan,
CEEGBROS Building, Chennai.

... Petitioner

Vs.

Sri Scorpion Racers Private Limited
C/o. Mr.S.Balasubramanian

... Respondent

PRAYER: Criminal Original petition has been filed under Section 482 of Cr.P.C, prayed to call for the records in C.M.P.No.3106 of 2018 in C.C.No.8976 of 2017 dated 20.12.2018 pending on file of the Id.Metropolitan Magistrate, FTC - III at Saidapet, Chennai, and set aside the same.

For Petitioner : Mr.R.Vivekananthan

For Respondent : Mr.K.S.Karthik Raja

ORDER

This Criminal Original Petition has been filed to set aside the order of the learned Metropolitan Magistrate, FTC - III at Saidapet, Chennai in C.M.P.No.3106 of 2018 in C.C.No.8976 of 2017 dated 20.12.2018.

2. The learned counsel for the Petitioner submits that by clerical error of the learned counsel for the complainant before the trial Court a petition under Section 257 of Cr.P.C., had been filed wherein it is stated as follows:

"That the complainant and Accused have reached to an amicable settlement in the above case.

That in the aforesaid circumstances the complainant those not intent to prosecution the Accused.



It is therefore most respectfully prayed that this Hon'ble Court may be pleased to permit to withdraw the complaint and may also to acquit the accused"

The above petition was accepted by the trial Court and the complainant was permitted to withdraw the same. Subsequently, the learned counsel for the complainant came to know about the same, the next day itself, he had filed a petition to restore the complaint and the same was refused by the learned Magistrate. Hence this petition had been filed.

3. Further learned counsel for the Petitioner submits that the Respondent can very well dispute the fact whether the matter was amicably settled or not. As per the learned counsel for the Petitioners, the subject matter of the complaint under Section 138 of Negotiable Instruments Act was not settled. The Respondent is aware of it. The inadvertence caused in filing the petition was by the Advocate Clerk attached to the Office of the learned Counsel for the complainant before the Court. The learned Metropolitan Magistrate -Fast Track Court-3, Saidapet had dismissed the case. The learned Judicial Magistrate did not accept the petition filed by the Petitioner seeking to recall the earlier Order on the ground that the Court had become "Functus Officio". Therefore, the defacto complainant had filed this petition invoking the powers of the High Court under Section 482 of Cr.P.C.,

4. In support of his arguments, the learned counsel for the Petitioner relies on the ruling of the Hon'ble Punjab & Haryana High Court reported in Indian Kanoon-<http://indiankanoon.org/doc/159042343/> in the case of the Nirmal Singh Vs. M/s. Rama Krishna Finance and another ruling of the Hon'ble Supreme Court reported in (2011) 14 SCC 813 in the case of Vishnu Agarwal Vs. State of Uttar Pradesh and another. The learned counsel for the Respondent submits that the Petitioner ought to have filed regular appeal against the order passed by the learned Metropolitan Magistrate, Fast Track Court, Saidapet instead of filing Crl.O.P invoking the power of the Court under Section 482 of Cr.P.C.,

5. The learned counsel for the Petitioner/complainant relied on the ruling of the Hon'ble Supreme Court reported in (2011) 14 SCC 615 in the case of Punjab State Warehousing Corporation, Faridkot Vs. Shree Durga Ji Traders and others wherein at paragraph Nos.9,11 and 12, it has been held as follows:



"9. The short question that falls for consideration is whether in the fact situation the High Court was justified in declining to exercise its jurisdiction under Section 482 of the Code?

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11. Bearing in mind the aforesaid legal position in regard to the scope and width of the power of the High Court under Section 482 of the Code, we are of the opinion that the impugned decision is clearly indefensible. As noted above, the High Court has rejected the petition under Section 482 of Code on the ground of availability of an alternative remedy without considering the seriousness of the nature of the offences and the fact that the trial Court had dismissed the complaint on a hypertechnical ground viz., since the complainant had been appearing in person, despite the order dated 16.04.1999, exempting him from personal appearance, the said exemption order became redundant and the complainant should have ought a fresh exemption from personal appearance. We feel that such a view defies any logic. An order of exemption from personal appearance continues to be in force till it is revoked or recalled.

12. We are convinced that in the instant case, rejection of the appellant's petition under Section 482 of the Code has resulted in miscarriage of justice. Availability of an alternative remedy of filing an appeal is not an absolute bar in entertaining a petition under Section 482 of the Code. As aforesaid, one of the circumstances envisaged in the said section, for exercise of jurisdiction by the High Court is to secure the ends of justice. Undoubtedly, the trial Court had dismissed the complaint on a technical ground and therefore, interests of justice required the High Court to exercise its jurisdiction to set aside such an order so that the trial Court could proceed with the trial on merits."

As per the reported ruling of the Hon'ble Supreme Court, the fact that regular appeal is the only remedy cannot be a ground to deny the relief under Section 482 of Cr.P.C., its inherent power of High Court to prevent miscarriage of justice or to prevent abuse of process of Court. Here, as per the submission of the learned counsel for the Petitioner that the Petitioner who is the complainant before the learned Metropolitan Magistrate, FTC -III, Saidapet filed a complaint under Section



138 of Negotiable Instruments Act. He filed a petition under Section 257 of Cr.P.C., to withdraw the complaint. Based on which, the Court had dismissed the complaint as withdrawn. Subsequently, he had filed a petition to restore the complaint on the ground that the error was committed by the Advocate Clerk. However it was rejected by the learned Metropolitan Magistrate on the ground that the Criminal Court does not have power to recall its own Judgment/Order is found acceptable. That is why the Petitioner/Complainant preferred this petition under Section 482 of Cr.P.C.,

6. The learned counsel for the Respondent/Accused submitted that the Petitioner ought to have filed a regular appeal instead of filing petition under Section 482 of Cr.P.C., Only to counter the same, the ruling of the Hon'ble Supreme Court had been relied on by the learned counsel for the Petitioner.

7. In the light of the reported ruling cited today by the learned counsel for the Petitioner/Complainant, this Criminal Original Petition is allowed. The Order passed by the learned Metropolitan Magistrate, FTC - III, Saidapet, Chennai in C.M.P.No.3106 of 2018 in C.C.No.8976 of 2017 dated 20.12.2018 is set aside. The private complaint under Section 138 of Negotiable Instruments Act is restored on the file of the learned Metropolitan Magistrate, FTC - III, Saidapet, Chennai. The learned Metropolitan Magistrate is directed to proceed with the trial and dispose of the case as early as possible.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To.

The Metropolitan Magistrate,
Fast Track Court-III,
Saidapet, Chennai.

+1cc to Mr.K.Kovindarajan, Advocate Sr.22610

Cr1.O.P.No.2404 of 2019

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srg 19/04/2022