

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2022

DELIVERED ON : 17.06.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.NO.23265 OF 2021

AND

CRL.M.P.NO.12758 OF 2021

K.Rajesh

... Petitioner

.Vs.

G.Mithunkumar

... Respondent

PRAYER:-

Criminal Original Petition has been filed under Section 482 of Cr.P.C, praying to set aside the Order dated 27.09.2021 in C.M.P.No.1197 of 2021 in STC.No.60 of 2020 on the file of the learned Judicial Magistrate, Fast Track Court, Poonamallee.

For Petitioner : Mr.C.R.Prasanan

For Respondent : Mr.L.Rajasekar

ORDER

This Petition has been filed to set aside the Order dated 27.09.2021 in C.M.P.No.1197 of 2021 in STC.No.60 of 2020 on the file of the learned Judicial Magistrate, Fast Track Court, Poonamallee.

2. The learned Counsel for the Petitioner invited the attention of this Court to the interim order passed by the learned Judicial Magistrate, Fast Track Court, Poonamallee granting interim compensation as per Section 143 of Negotiable Instruments Act. It is the contention of the learned Counsel for the Petitioner that ignoring the provisions of the Act, mechanically the learned Judicial Magistrate has passed orders that 20% of the cheque amount was ordered to be deposited in the Court.

2.1. The learned Counsel for the Petitioner submits that without any reasons, the learned Judicial Magistrate granted compensation as per the amendment of Section 143 of Negotiable Instruments Act for the conduct of the Accused in delaying the trial or either causing evading of summons or in the conduct of the trial proceedings. Here, the Petitioner is the Accused before the Trial Court and has co-operated with the Court and he had been appearing regularly. There is no delay on his part. The order passed by the learned Judicial Magistrate is silent regarding the conduct of the Accused before the Court. Under such circumstances, the order of the learned Judicial Magistrate directing the Petitioner to deposit 20% of the cheque amount is not at all sustainable as per Section 143(a) of the Negotiable Instruments Act. Therefore, the learned Counsel for the Petitioner seeks to set aside the order passed by the learned Judicial Magistrate.

3. The learned Counsel for the Respondent/Complainant submits his reply to the submissions of the learned Counsel for the Petitioner stating that the order passed by the learned Judicial Magistrate need not be set aside as it is within the discretion granted to the learned Magistrate. Therefore, he seeks to dismiss this Petition as not maintainable.

4. On perusal of the Order passed by the learned Judicial Magistrate, Fast Track Court, Poonamallee in C.M.P.No.1197 of 2021 in STC.No.60 of 2020 dated 27.09.2021, it is found that the reasons had not been stated for imposing compensation of 20 % of the cheque amount on the Petitioner who is an Accused facing trial before the learned Judicial Magistrate. The learned Counsel for the Petitioner relied on the Order passed by this Court in CrI.O.P.No.18744 of 2020 dated 31.08.2021 and the Judgment of this Court reported in 2019 SCC Online Mad 38927 in the case of Mahadevan Iyer Vs. Anbhazhagan in which it had been reiterated that in cases of this nature, orders passed under Section 143 (a) (1) of Negotiable Instruments Act, the Orders for interim compensation can be passed by the learned Judicial Magistrate (Magisterial Level) is concerned only for the conduct of the Accused in delaying the trial either evading summons from the Court or after repeated attempts, appearing before the Court or absconding and thereby causing delay in the trial. Here, no such circumstances had been stated by the learned Judicial Magistrate in his Order. Therefore, as rightly pointed out by the learned Counsel for the Petitioner, the Order passed by the learned Judicial Magistrate in CrI.M.P.No.1197 of 2021, when there is a lack of reasoning, this Court cannot accept it. The learned Judicial Magistrate, Fast Track Court, Poonamallee had failed to exercise discretion in invoking the powers of the Court for granting interim compensation of 20% of the cheque amount as interim compensation to the Complainant. Also, the

learned Counsel for the Petitioner placed reliance regarding the adjudication of the learned Judicial Magistrate, Fast Track Court wherein it is found that the case in STC.No.60 of 2020 is pending from 23.01.2021 for recording evidence. Nowhere it is found that the Accused absconded resulting in delay in trial. Under those circumstances, the Order passed by the learned Judicial Magistrate, Fast Track Court, Poonamallee in CrI.M.P.No.1197 of 2021 is found to be not as per the Provisions of the Section 143 (a) of Negotiable Instruments Act. Therefore, for the lack of exercising discretion, the Order has to be set aside. The submission of the learned Counsel for the Respondent/Complainant that the Order is very much maintainable as per the Provisions of Section 143 (a) of Negotiable Instruments Act is found unacceptable. In the light of the above discussion and the same is rejected.

4.1. In the result, the Order dated 27.09.2021 in C.M.P.No.1197 of 2021 in STC.No.60 of 2020 on the file of the learned Judicial Magistrate, Fast Track Court, Poonamallee granting interim compensation of 20% of the cheque amount on the Accused is found without any acceptable reason. Therefore, the same is set aside.

4.2. The learned Judicial Magistrate is directed to proceed with the trial and to dispose of the case within a reasonable period of two months from the date of receipt of a copy of this order or from the date of uploading this Order in the website of this Court.

In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dh/tri

To

1. The Judicial Magistrate,
Fast Track Court,
Poonamallee.
2. The Chief Metropolitan Magistrate,
Poonamallee, Chennai.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.R.Prasanan, Advocate, S.R.No.36876
+1cc to Mr.L.Rajasekar, Advocate, S.R.No.36815

CRL.O.P.NO.23265 OF 2021

SSI(CO)
PBS/13/07/2022