



WEB COPY



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Wednesday, the Third day of August Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr. Justice G.ILANGO VAN

CRL MP (MD) . Nos.8040 & 8041 of 2022
in
CRL RC (MD) . Nos.336 & 337 of 2016

S.Kumaran ...Petitioner/Petitioner in both petition
Vs

M.Rajesh Kumar ...Respondent/Respondent in both petitions

Prayer in CRL MP (MD) . No.8040 of 2022 :-

This Petition filed under section 482 of Cr.P.C., to modify the order and permit the petitioner herein to comply the order dt 30.11.2020 made in Crl.R.C.(MD).No.336/2016.

Prayer in CRL MP (MD) . No.8041 of 2022 :-

This Petition filed under section 482 of Cr.P.C., to modify the order and permit the petitioner herein to comply the order dt 30.11.2020 made in Crl.R.C.(MD).No.337/2016.

Prayer in CRL RC (MD) . No.336 of 2016 :-

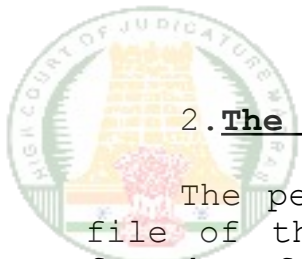
This Revision Petition filed under section 397 r/w 401 of Cr.P.C., against the order dated 28/10/2015 in C.A. No.38 of 2014 on the file of the 1st Additional District and Sessions Judge, Tirunelveli confirming the order of conviction and sentence imposed dated 14/03/2014 in C.C. No.242 of 2013 on the file of the the learned Judicial Magistrate, Valliyoor, Tirunelveli District.

Prayer in CRL RC (MD) . No.337 of 2016 :-

This Revision Petition filed under section 397 r/w 401 of Cr.P.C., against the order dated 28/10/2015 in C.A. No.39 of 2014 on the file of the 1st Additional District and Sessions Judge, Tirunelveli confirming the order of conviction and sentence imposed dated 18/03/2014 in C.C. No.243 of 2013 on the file of the the learned Judicial Magistrate, Valliyoor, Tirunelveli District.

ORDER:- These Petitions are coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/s M. Vijayarathinam, Advocate for the Petitioner and of Mr.An. Ramanathan, Advocate for the respondent, this Court made the following order:

These criminal miscellaneous petitions are filed seeking for modification of the order and permit the petitioner to comply the order of this court, dated 30/11/2020 passed in Crl.RC (MD) Nos.336 and 337 of 2016.



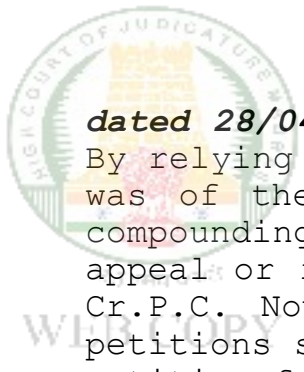
2.The facts in brief:-

The petitioner was tried in CC Nos.243 and 244 of 2013 on the file of the Judicial Magistrate, Valliyoor, Tirunelveli District, for the offence under section 138 of the Negotiable Instruments Act. He was convicted by the trial court, which was also confirmed by the first appellate court in the respective appeals. In both cases, he was sentenced to undergo one year simple imprisonment and directed to pay a compensation of Rs.1,00,000/- each in CC Nos.242 and 243 of 2013. Against which, he preferred appeals in Crl.A Nos.38 and 39 of 2014. Both were dismissed, confirming the conviction and sentence passed by the trial court. Against which, criminal revisions have been filed before this court in Crl.RC(MD)Nos.336 and 337 of 2016. This court, after going through the records came to the conclusion that absolutely, there is no reason to differ from the view, that has been taken by the trial court as well as the first appellate court. But however, this court thought it fit to modify the sentence to the effect that if the petitioner deposits Rs.50% of the amount to the credit of CC No.242 of 2013 within a period of eight weeks from the date of receipt of the copy of the order and the sentence will be modified with the above said condition. So also in Crl.RC (MD)No.337 of 2016, similar order was passed. Totally, the petitioner has to deposit Rs.1,00,000/- in both cases. While imposing the above said condition, this court was of the view that no further extension on any account will be given. With the above direction, both the criminal revision petitions were disposed of, on 13/11/2020.

3.As stated above, eight weeks time was given to the petitioner. But what happened after that is a matter for consideration in these miscellaneous petitions.

4.The petitioner has stated that because of continuing the pandemic situation, he was not in a position to comply the condition and even he is not in a position to contact his counsel, who is appearing for him before this court. There was miscommunication between them, as a result of which, he was not informed the out come of the order. He came to know about the order only when warrant has been issued against him. So on that ground, these criminal miscellaneous petitions have been filed.

5.A strong objection has been made by the learned counsel appearing for the respondent stating that extension of time is not maintainable and these petitions have been filed much after a period two months from the date of the order. It is also contended that after passing the order, the court has become *functus officio* and no extension or modification is permissible under section 362 Cr.P.C. For that purpose, he would rely upon the Division Bench judgment of this court in the case of **M.Siva Perumal Vs. S.Kamaananthan (Criminal. MP SR No.63240 of 2019 in Criminal Appeal No.373 of 2015,**



dated 28/04/2021) and there was a case, which was similarly. By relying upon section 362 Cr.P.C, the Division Bench of this court was of the view that no extension of time is permissible, since compounding of offence is not permissible after the dismissal of the appeal or revision by exercising the jurisdiction under section 482 Cr.P.C. Now the respondent on this ground wants dismissal of the petitions since it has been categorically held by this court that no petition for extension of time will be entertained.

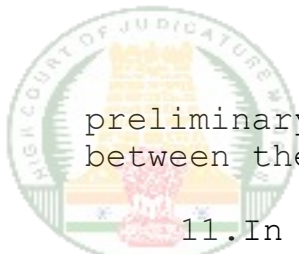
6. So the question, which arises for consideration is that whether in the light of the above said factual aspect, this court has become a *functus officio*, because of the above said stringent condition.

7. Now the learned counsel appearing for the petitioner would reply upon the factual aspect as well relationship of the parties. The complaint, in both matters, is the brother-in-law. The accused, who is the petitioner herein has stated that his wife stolen the cheques and presented the same for payment through her brother. According to the petitioner, because of the matrimonial issue between the husband and wife, these two false cases have been filed.

8. But the learned counsel appearing for the respondent would submit that because of the matrimonial issue, the wife was driven out of the house by the petitioner and now she has been taken care by her brother, who is the complainant herein. When such being the strained relationship, he wants the matter to be dismissed.

9. Exclusively on the point of relationship, I am of the considered view that in the facts and circumstances of the case, extension of time, that was sought by the petitioner can be permitted. If the petitioner is sent to prison, then automatically the relationship now has strained will become worsen and making compromise will become impossible. At one point of time, the wife came for a settlement. Such a course in the matrimonial life cannot be ruled out at any point of time. Settlement is always possible till the life time of the parties. When we look this from the above said factual aspect, I am of the considered view that section 362 Cr.P.C should not tie the hands of this court from exercising the discretionary power. The discretionary power can be exercised by this court for the better advancement of the relationship of the parties. Because the relationship is a more important, than the criminal prosecution. So only on that ground, I am of the considered view that when the petitioner has come forwarded for payment of the amount, that must be accepted.

10. Another reason is that the offence under section 138 of the Negotiable Instruments Act is basically a civil liability. But the criminal consequence has been imposed. So it has been repeatedly pointed by the Hon'ble Supreme Court and other courts that the



preliminary aim must be looked into and must try to settle between the parties.

11. In the light of the above discussion, both Criminal Miscellaneous Petitions are **allowed** and time is extended by one month from date of receipt of a copy of the order for complying the condition imposed by this court. If the petitioner deposits the amount, the trial court is directed to accept the same based upon this order and recall the warrant issued against him.

12. With the above said observation, these criminal miscellaneous petitions are **allowed**.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/09/2022

Sub Assistant Registrar (CS)

To

1. The I Additional District and Sessions Judge, Tirunelveli.
2. The Judicial Magistrate, Valliyoor, Tirunelveli District.
3. The Principal District Judge, Tirunelveli.
4. The Chief Judicial Magistrate, Tirunelveli.

Copy to:

The Section Officer (Criminal Records)

Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+2 CC to M/s.AN.RAMANATHAN, Advocate (SR-8111,8110[I] dated 04/08/2022)

+1 CC to M/s.M.VIJAYARATHINAM, Advocate (SR-8168[I] dated 04/08/2022)

ORDER DATED : 03/08/2022

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ORDER

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CRL MP (MD) . Nos.8040 & 8041 of 2022

in

CRL RC (MD) . Nos.336 & 337 of 2016

Giving direction and etc.

as stated within.