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Crl.R.C.No.439 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.04.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.439 of 2020

and

Crl.M.P.No.3459 of 2020

B.Chinthamani

.. Petitioner

Vs.

Unnikrishanan

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to call for the records and set aside the order dated 07.01.2020, passed by the Principal District and Sessions Judge, Thiruvallur District, Thiruvallur, under Section 148 of Negotiable Instruments Act. Application in Crl.M.P.No.118 of 2020 in C.A.No.01 of 2020 in S.T.C.No.49 of 2014 and consequently allow the 148 N.I.Act application filed by the petitioner and pleaded to adjust a sum of Rs.1,00,000/- kept in S.T.C.No.49 of 2014 case vide Receipt Number 264207, dated 20.02.2017 in Criminal Court Deposit on the file of the Fast Track Court, Judicial Magistrate Level, Poonamallee, Chennai 600 056, to deposit under 20% cheque amount in Criminal Appeal Number 01 of 2020 on the file of the 2nd Additional District and Sessions Judge, Thiruvallur at Poonamalle, Chennai 600056.



Crl.R.C.No.439 of 2020

For Petitioner : Mr.A.Ramaswamy
For Respondent : No appearance

ORDER

This Criminal Revision Case is filed being aggrieved by the order passed by the lower Appellate Court declining the prayer of the revision petitioner to adjust Rs.1,00,000/- deposited in the account in S.T.C.No.49 of 2014 towards the 20% of the cheque amount as requested to be deposited as a precondition for preferring an Appeal against conviction under Section 138 of N.I.Act.

2. The case where the Revision Petitioner, who is an accused in S.T.C.No.49 of 2014 on the file of the Fast Track Court Judge (Judicial Magistrate level II) Poonamallee, Tiruvallur, was found guilty of issuing the cheque for Rs.5,00,000/- to the complainant/Unnikrishnan, but not made arrangement to honour the cheque. The Trial Court sentenced him to undergo 6 months S.I., and awarded compensation of Rs.5,00,000/-, in default to undergo 2 weeks S.I.

3. Being aggrieved by the conviction and sentence, the



Crl.R.C.No.439 of 2020

WEB COPY

Revision Petitioner has preferred Criminal Appeal in C.A.No.1 of 2020 on the file of II Additional District and Sessions Judge, Thiruvallur. From the record, this Court finds that the Appeal has been admitted and sentence imposed by the Trial Court being suspended pending disposal of the Appeal.

4. The grievance of the Revision Petitioner is that pending trial, he filed a petition under Section 311 Cr.P.C., sought for recall of PW.1, that petition was rejected by the Trial Court. Hence he approached the High Court by filing Crl.R.C.No.471, 472 of 2017, wherein, the this Court allowed the petition to recall PW.1 on condition to deposit Rs.1,00,000/- in the S.T.C., account. Accordingly, the Revision Petitioner deposited Rs.1,00,000/- and availed the opportunity of recalling PW.1 for cross examination. Therefore, while preferring the Appeal in order to satisfy the precondition, he sought leave of the Appellate Court to adjust Rs.1,00,000/- already deposited for granting suspension of sentence. When admitting the Appeal, the lower Appellate Court vide order dated 07.01.2020 has held that according to Section 148 of N.I.Act, the



Crl.R.C.No.439 of 2020

WEB COPY

Appellate Court may order the appellant to deposit of such amount, there shall be minimum of 20%, the adjustment claimed by the petitioner/appellant cannot be granted, since the same was deposited under different circumstances and has no relation with the suspension of sentence.

5. No doubt, the observation of the lower Appellate Court is factually correct, however after disposal of the STC, the amount deposited as a precondition to recall PW.1 ceases. Therefore, the Trial Court ought to have passed order regarding disposal of the amount deposited. In this case, the Trial Court has failed to make any reference about Rs.1,00,000/- deposited by the accused in the account of S.T.C., which has prompted the accused to adjust the money in his appeal towards 20% of the cheque amount as precondition to prefer the Appeal in compliance of Section 148 of N.I.Act.

6. Though there is no perversity or error in the findings of the



Crl.R.C.No.439 of 2020

lower Appellate Court in the impugned order, the requirement of Section 148 of N.I.Act can be easily complied and satisfied by directing the lower Appellate Court to withdraw Rs.1,00,000/- deposited in the STC account and invested in any nationalised bank earning interest. The money may be kept in deposit till the disposal of the Crl.A.No.01 of 2020 and appropriate order may be passed by disposing the Appeal.

7. With the above direction, this *Criminal Revision Case is disposed of*. Consequently, connected Crl.M.P., is closed.

13.04.2023

Internet : Yes/No

Index: Yes/No

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To

1.The Principal District and Sessions Judge, Thiruvallur District, Thiruvallur.

2.The Fast Track Court, Judicial Magistrate Level, Poonamallee, Chennai.

Dr.G.JAYACHANDRAN, J.



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Crl.R.C.No.439 of 2020

rpl

Crl.R.C.No.439 of 2020

13.04.2023