



*Crl.O.P.No.14356 of 2021
and Crl.MP.Nos.7828 & 11416 of 2021*

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2023

CORAM:

THE HONOURABLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.No.14356 of 2021
and
Crl.MP.Nos.7828 & 11416 of 2021

D.Manickavelu

... Petitioner

-Vs-

P.Thamizh Arasu @ Thamilarasu

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, praying to call for the records and set aside the order passed by the learned Judicial Magistrate No.II, Chengalpattu in C.C.No.1 of 2021 dated 05.05.2021.

For Petitioner : Mr.T.R.Ravi

For Respondent : Ms.M.S.Rajeswari

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to C.C.No.1 of 2021 and to set side order dated 05.05.2021 passed



*Crl.O.P.No.14356 of 2021
and Crl.MP.Nos.7828 & 11416 of 2021*

WEB COPY

by the learned Judicial Magistrate-II, Chengalpattu.

2. The petitioner is the accused against whom the respondent has filed a complaint under Section 138 of The Negotiable Instruments Act for the offence of dishonour of cheque. The impugned cheque involved in C.C.No.1 of 2021 is for a sum of Rs.10,00,000/-. During pendency of these proceedings before the learned Judicial Magistrate-II, Chengalpattu, on 05.05.2021, the learned Magistrate had exercised his powers under Section 143A and passed an order to pay an interim compensation @ 20% of the cheque amount while recalling the warrant pending against the accused. The impugned order would state that 5% of the cheque amount should be paid on 10.05.2021 and balance 15% of the cheque amount should be paid on 31.05.2021 in accordance with Section 143A. Aggrieved by the said order, the petitioner/accused had preferred this petition.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent. Perused the entire materials available on record.

4. The learned counsel for the petitioner submitted that the parties had attempted a settlement of the larger issue itself and requested this Court to refer the parties to Mediation. Accordingly, the parties were referred to



*Crl.O.P.No.14356 of 2021
and Crl.MP.Nos.7828 & 11416 of 2021*

WEB COPY

Mediation. The Mediation Agreement was also entered into between the petitioner and the respondent on 07.03.2022. As per the terms of the Mediation Agreement, the respondent had agreed to receive a sum of Rs.10,50,000/- (Rupees Ten Lakhs and Fifty Thousand only) as full quit from the petitioner and that would include the claim made by the respondent in an unnumbered private complaint filed before the Judicial Magistrate Court, Chengalpattu against the very same petitioner on the basis of an another cheque issued by him for a sum of Rs.11,00,000/-. The said sum of Rs.10,50,000/-, which was agreed to be paid by the petitioner should be paid in four monthly instalments and the first of such instalment would start from the 25th of every month following the date of Mediation Agreement.

5. It appears from the Mediation Agreement that the undertaking for the said payment was already made by the petitioner on 23.12.2021 itself, but the payment schedule was postponed with effect from March 2022, taking into consideration of the pandemic situation existed then. As per the submission of the learned counsel for the petitioner, the petitioner had made a total payment of Rs.8,25,000/- on various dates. However, the learned counsel for the respondent submitted that the total payment made on various



*Crl.O.P.No.14356 of 2021
and Crl.MP.Nos.7828 & 11416 of 2021*

dates would aggregate to Rs.7,75,000/- only. The memo has been filed from the side of the respondent to show the particulars of dates and amounts paid. Though in the Memo, the total amount paid is stated as Rs.7,50,000/-, the learned counsel for the respondent has agreed that subsequent to the filing of the Memo, a payment of Rs.25,000/- was made on 14.11.2022. The above payments seem to have been made on 11 occasions in a piecemeal manner and not in accordance with the terms of the Mediation Agreement. Had the petitioner completed the terms of the Mediation Agreement. The entire amount ought to have been paid within four months from March, 2022. The payment details furnished by the respondent would show that at no point of time, the payment has been made @ Rs.2,50,000/- per month. So whatever may be the case, the sum of Rs.7,75,000/- was agreed to have been received by the respondent. The above said amount would exceed 20% of the cheque amount. Though the petitioner did not make payment in compliance of the order of the learned Judicial Magistrate, Chengalpattu dated 05.05.2021, subsequent to the Mediation he had paid 20% of the cheque amount. In view of the above said fact, the order of the learned Judicial Magistrate-II, Chengalpattu dated 05.05.2021 itself will become infructuous.



*Crl.O.P.No.14356 of 2021
and Crl.MP.Nos.7828 & 11416 of 2021*

WEB COPY

6. The learned counsel for the petitioner submitted that no order for interim compensation can be made without assigning any reasons and the law on this point has been settled already by the Hon'ble Supreme Court and it has been followed by this Court also. He relied on the decision of this Court dated 12.07.2019 in the case of ***LGR Enterprises and another Vs. P.Anbazhagan*** in support of his above contention. As stated already, the legal issue need not be tackled at length at this point of time, where the order the learned Judicial Magistrate has become infructuous, due to the subsequent event as narrated already.

7. Even though the petitioner was given opportunity to settle the entire issue, which is inclusive of the other unnumbered complaint filed by the respondent against the petitioner for the offence under Section 138 of The Negotiable Instruments Act on the basis of another cheque issued by the petitioner, he did not make use of the opportunity and lost the benefit of the Mediation Agreement entered into between the parties. Hence, the learned Trial Judge is at liberty to resume the process of trial and conduct the case. In the event of finding the accused guilty for the offence under Section 138 of The Negotiable Instruments Act and in the event of the Court awarding



*Crl.O.P.No.14356 of 2021
and Crl.MP.Nos.7828 & 11416 of 2021*

any compensation at the conclusion of the trial, the Trial Court shall take into consideration of payments already made by the petitioner in pursuant to an unfulfilled Mediation Agreement dated 07.03.2022.

8. With the above observations, this Criminal Original Petition is disposed of. It is needless to state that the respondent is also at liberty to get the other case (which was already filed and kept unnumbered), numbered and proceeded in accordance with law. Consequently, connected Miscellaneous Petitions are closed.

23.02.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation Case: Yes/No
kmi

To
The Judicial Magistrate No.II,
Chengalpattu.



WEB COPY



*Crl.O.P.No.14356 of 2021
and Crl.MP.Nos.7828 & 11416 of 2021*

R.N.MANJULA, J

kmi

Crl.O.P.No.14356 of 2021
and
Crl.MP.Nos.7828 & 11416 of 2021

23.02.2023