



Crl.O.P.No.15823 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

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C. Vadivel

...Petitioner

-Vs-

K. Sabapathy

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 06.05.2021 in C.M.P.No.386 of 2021 in C.C.No.128 of 2017 on the file of the Judicial Magistrate – I, Namakkal.

For Petitioner	: Ms. S. P. Nirmala For Mr. D. Shivakumaran
For Respondent	: Ms. Saranya Bai For Mr. R. Saravanan



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ORDER

This Criminal Original Petition has been filed seeking to set aside the order passed by the learned Judicial Magistrate No.I, Namakkal in C.M.P.No. 386 of 2021 in C.C.No. 128 of 2017 dated 06.05.2021.

2.The learned counsel for the petitioner submitted that the petitioner had filed C.M.P.No.386 of 2021 in C.C.No.128 of 2017 before the Judicial Magistrate Court – I, Namakkal, praying for return of Rs.1,50,000/- deposited by him during the pendency of the appeal in C.A.No.52 of 2020 on the file of the Additional District and Sessions Court, Namakkal. The petitioner was acquitted by the learned Additional District and Sessions Judge by judgment dated 12.10.2020. The petitioner thereafter, filed an application for return of the amount deposited by him. The said petition was dismissed on the ground that an appeal has been filed against the acquittal before this Court in Crl.A.No.292 of 2021.



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3.The learned counsel for the petitioner would submit that once the petitioner has been acquitted, the presumption of innocence is confirmed and the amount deposited cannot be retained, merely because an appeal against the acquittal is filed before this Court. It is always open to the respondent, to recover the amount, if the petitioner is found guilty and any compensation is awarded.

4.The learned counsel for the respondent submitted that as against the judgment of acquittal before the Additional District and Sessions Judge, Namakkal, the respondent had filed Crl.A.No.292 of 2021 before this Court. Therefore, the petitioner is not entitled for refund of amount deposited till the disposal of the appeal by this Court.

5.This Court finds that once the petitioner has been acquitted for the offence under Section 138 of Negotiable Instruments Act, the presumption of innocence is confirmed by a judicial pronouncement. In such circumstances, it is not proper to retain the amount deposited by him, merely because there is an appeal against the acquittal pending



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before this Court. Even if this Court had to ultimately reverse the judgment of acquittal, it is not as if, the respondent is without any remedy.

6.Hence, this Court is of the view that the petitioner is entitled to refund of amount deposited by him in compliance of the order passed by appellate Court in C.M.P.No.777 of 2020 dated 24.07.2020 and the learned Judicial Magistrate No.I, Namakkal, is directed to return the amount deposited by the petitioner as prayed for by him. Accordingly, this Criminal Original Petition is allowed.

14.06.2023

smv

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

To

1.The Judicial Magistrate No.I, Namakkal.

2.The Public Prosecutor,
High Court of Madras.



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SUNDER MOHAN,J.
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