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Crl.O.P.No.23630 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.23630 of 2023

and

Crl.M.P.No.16462 of 2023

G.Sabari Giri

... Petitioner

Vs.

G.Kamal Kannan

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the partly allowed the order passed in C.M.P.No.4252/2023 dated 01.06.2023 in S.T.C.No.81/2021 on the file of Judicial Magistrate No.II, at Krishnagiri.

For Petitioner : Mr.C.Deepak Kumar

ORDER

The petitioner herein, being aggrieved by the conditional order passed by the lower appellate Court under the Negotiable Instruments Act, is before this Court challenging the said order.



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2. On perusal of the records, this Court finds that the subject matter of the cheque is of the year 2019. S.T.C.No.81 of 2021 is pending on the file of the Judicial Magistrate -II, Krishnagiri. The complainant has taken out an application under Section 148 of N.I.Act seeking direction to the respondent accused to deposit 20% of the total cheque amount [i.e., Rs.33,00,000/-] as per the amended N.I.Act to defend the complaint. The said petition was resisted by the respondent accused by filing counter. After hearing both sides, the trial Court had allowed the petition and directed the accused to pay a sum of Rs.6,60,000/- which is 20% of the total cheque amount within a period of 60 days. Being aggrieved the present petition is filed to set aside the order of the trial Court.

3. The learned counsel appearing for the petitioner submitted that it is a disputed fact regarding the liability and admitted fact that the petitioner's father and respondent were carrying on Granite business jointly. Therefore, the exercise of power under Section 143A of N.I.Act is unwarranted in this case.



4. The crux of the complaint is that in the course of transaction, the accused approached the complainant for a loan to improve his business and promise to repay it within a period of three months. However, after receiving the money, he failed to repay the loan. After much persuasions, the accused gave a cheque for Rs.33,00,000/-, but on presentation, it was returned for not arranging the fund. In the reply notice, it appears that the accused has admitted the signature in the cheque and admitted part liability of Rs.17,00,000/-.

5. Taking into consideration of the said admission and the provisions of Negotiable Instruments Act, the trial Court has directed the accused to deposit Rs.6,60,000 within 60 days. This Court finds that no error in the order, since it is based on the admitted liability of accused person to the tune of Rs.17,50,000/-. The conditional order now passed to deposit Rs.6,60,000/- within 60 days, if really the petitioner has any material to reverse the burden of proof, he can seek for expedite the trial and by this time could have even got acquittal. Contrarily, he has approached this Court to modify the conditional order which in view of this Court is not warranted.

Dr.G.JAYACHANDRAN,J.



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6. Therefore, this Criminal Original Petition is dismissed.

Consequently, the connected Criminal Miscellaneous Petition is also dismissed. If the time prescribed to deposit 20% is expired, it shall be extended for another 15 days from today to enable the petitioner to deposit the money and proceed with the trial.

19.10.2023

Index : Yes/No

Neutral Citation : Yes/No

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To

The Judicial Magistrate No.II, Krishnagiri.

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