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CrI.O.P.No.34199 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.03.2023
Pronounced on : .03.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CrI.O.P.No.34199 of 2019

R.Karthikeyan

... Petitioner

Vs.

S.Sathiskumar

...Respondent

Prayer: This Criminal Original Petition has been filed under Section 482 Cr.P.C., to modify the bail condition imposed further on the Petitioner/Petitioner/Appellant/Accused herein on 14.11.2019 in CrI.M.P.No.6543/2019 in Criminal Appeal No.87/2019 on the file of the learned Principal District and Sessions Judge, Chengalpattu in respect of the deposit of Rs.10,00,000/- (Rupees Ten Lakhs only) before the learned Judicial Magistrate, Madurantakam.

For Petitioner : Mr.G.Saravanan

For Respondent : Mr.K.Thilagaraj



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ORDER

The above petition has been filed challenging the order passed by the learned Principal Sessions Judge, Chengalpattu in Crl.M.P.No.6543 of 2019 in Crl.A.No.87 of 2019.

2.The petitioner was tried in C.C.No.200 of 2017 and convicted for the offence under Section 138 of Negotiable Instruments Act, 1881. He was sentenced to undergo two years R.I and to pay a fine of Rs.10,000/- and in default to undergo 6 Months S.I. He was further directed to pay a compensation of Rs.40,00,000/- (Rupees Forty Lakhs only).

3.The petitioner challenged the said Judgment of conviction before the learned Principal Sessions Judge, Chengalpattu. The learned Sessions Judge suspended the sentence of imprisonment imposed on the petitioner. The learned Judge however directed the petitioner to deposit a sum of Rs.10,00,000/- before the trial Court towards compensation amount within thirty days.



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4. Aggrieved by the said direction to deposit Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation, the petitioner had preferred the above petition seeking to set aside the said order.

5. The learned counsel for the petitioner submitted that the Judgment of the trial Court in the first place is erroneous. The trial Court ought not to have directed the petitioner to pay a compensation since the petitioner was sentenced to pay fine, in view of the Section 357 (3) Cr.P.C. The Appellate Court ought not to have directed the petitioner/appellant to deposit a portion of the compensation amount awarded erroneously by the trial Court. The learned counsel further submitted that in any event since the cheque amount is only Rs.20,00,000/- (Rupees Twenty Lakhs only), the Appellate Court ought not to have directed the payment of exorbitant sum of Rs.10,00,000/-.

6. Though notice was served on the respondent, he has not entered appearance.



7.This Court by the order dated 13.01.2020 had called for remarks from the learned Magistrate as to why he had directed the accused to pay compensation in a case where he had imposed fine in violation of 357 (3) Cr.P.C. The relevant portion of the order is extracted hereunder;

“3. Since the punishment prescribed under Section 138 of the N.I. Act, is only upto two years, certainly the said case is a summons case and in such case the provisions which are applicable for trying a summons case will apply, but a perusal of the Judgment of the Trial Court shows that the Judicial Magistrate has asked a question with the accused under Section 248 (2) Cr.P.C. with regard to the awarding of sentence. The said provision will apply only for the cases relating to warrant cases. Further, as per Section 357(1) of Cr.P.C. when a court imposes a sentence of fine or a sentence of which, fine forms a part, the Court may, when passing judgment, order the whole or any part of the said fine recovered to be applied in the payment of compensation. As per Section 357(3) of Cr.P.C., when a court imposes a sentence of which fine does not form a part, the Court may when passing judgment, order the accused to pay by way of compensation, such amount as may be specified in the order. But in this case, the learned Judicial Magistrate imposed fine and also directed the accused to pay compensation. This



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Court has noticed in the previous occasions also that the same Judicial Magistrate has passed similar kind of orders. Hence, the Registry is directed to call for remarks from the concerned Judicial Magistrate by sending a copy of this order. Call on 07.02.2020.”

8.The learned Magistrate has sent a reply that he had made an inadvertent mistake and that he would ensure that such mistake would not occur in future. The said explanation is accepted.

9.Section 357 (3) Cr.P.C., reads as follows :

“ (3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.”

In the instant case, the learned Magistrate had passed a sentence in which fine forms a part. Hence, the order passed by the learned Magistrate directing the petitioner to pay Rs.40,00,000/- as compensation is contrary to the above



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provision. Consequently, the order passed by the Appellate Court directing the petitioner to pay a portion of the compensation amount, directed to be paid by the trial Court, cannot be sustained and hence deserves to be set aside.

10.The learned Principal Sessions Judge, Chengalpattu may expedite the hearing of the appeal and dispose it in accordance with law. However, in the event of conviction, it is needless to say that the learned Principal Sessions Judge, Chengalpattu may pass appropriate orders in accordance with the provisions of Section 357 Cr.P.C.

11.For the above reasons, this Criminal Original Petition is allowed.

.03.2023

dk/ay

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

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1. The Principal District and Sessions Judge,
Chengalpattu

2.The Judicial Magistrate
Madurantakam.

SUNDER MOHAN, J

dk/ay

Pre-delivery order in

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