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Crl.O.P.(MD)No.4719 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

Crl.O.P.(MD)No.4719 of 2023
and Crl.M.P.(MD).Nos.4143 & 4144 of 2023

R.Thiruvengkata ra Ramanuja Dass

... Petitioner

Vs.

A.Palanisamy

... Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to set aside the order passed by the learned Judicial Magistrate Court No.I, Virudhunagar, in Cr.M.P.No.3917 of 2022 in C.C.No.71 of 2022 dated 09.12.2022 by allowing this petition.

For petitioner : Mr.M.Kannan

For Respondent : Mr.G.Mariappan

ORDER

This Criminal Original Petition has been filed to set aside the order passed by the learned Judicial Magistrate Court No.I, Virudhunagar, in Cr.M.P.No.3917 of 2022 in C.C.No.71 of 2022 dated 09.12.2022.

2.The facts in brief:

The petitioner is an accused in C.C.No.71 of 2022 before the



trial Court, namely the Judicial Magistrate Court No.I, Virudhunagar.

There was a complaint under Section 138 of the Negotiable Instruments Act. The case of the complainant is that this petitioner received sum of Rs.10,00,000/- on 21.01.2019, agreeing to repay the same with interest. To discharge the above said amount, he issued a cheque on 05.08.2021 drawn on Indian Bank, Virudhunagar Branch, that was presented for payment, later, returned as dis-honoured. After completing the statutory formalities, he filed a complaint and pending the enquiry or trial as the case may be, he filed Crl.M.P.No.3917 of 2022, seeking a direction to the respondent/petitioner to deposit 20% of the cheque amount pending trial process by exercising the right, power under Section 143 (A) of the Negotiable Instruments Act.

3.That was resisted by the petitioner setting out the facts and circumstances that the above said cheque was forcibly obtained in pursuance of the complaint given to the Superintendent of Police. Even though the complaint was given by him against the above said forcible Act, no action was taken.

4.After hearing both sides the trial Court was of the view that since the accused does not plead guilty and dispute the cheque, he must deposit



20% of the cheque amount.

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5.Legality of this order is called for and such by filing this criminal original petition.

6.The learned counsel for the respondent would make a preliminary objection to the effect that absolutely no appeal provision has been prescribed against the interim order, since in the absence of any such statutory right filing of this petition under Section 482 Cr.P.C. itself is not maintainable. So according to him, the petitioner refused to or failed to pay the amount in spite of repeated request. According to him, the date of the loan is on 21.01.2019. The case was filed only in the year 2022. He was waiting for more than three years for honouring the liability. Only based upon this point, the trial Court has passed such an order, which does not suffer from any illegality.

7.Per contra, the learned counsel for the petitioner submitted that order under Section 143 (A) of the Negotiable Instruments Act is not automatic one. The trial Court has misconstrued the provision and has passed the order even without taking into account the defence that was raised by the petitioner. He would further submit that when the liability



itself is under question, simply, because he did not plead guilty and tried legality will not give automatic right upon the complainant to claim the interim compensation amount. According to him, it is a discretionary power, which has been vested in the trial Court. The discretion should be exercised in proper manner setting out the proper facts and circumstances.

8. Section 143(A) of the Negotiable Instruments Act reads as follows:

“143-A. Power to direct interim compensation.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant—

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and (b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-



section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order; or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this Section may be recovered as if it were a fine under Section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) The amount of fine imposed under Section 138 or the amount of compensation awarded under Section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this Section.”

9. Reading of the above said provision makes it clear that it is a discretionary relief. For exercising the discretionary relief deciding



factors, are the facts and circumstances of the case. He except stating that the petitioner has not pleaded guilty, no other reason is mentioned. So it suffers from the improper exercise of judicial exercise power. Reasons should assigned by the trial Court. Without any reason, passing such an order is not at all permissible under law, more particularly when discretionary power is exercised by the Courts.

10.On the sole ground, I am of the considered view that the order that has been passed by the trial Court is liable to be set aside. Accordingly, order passed by the learned Judicial Magistrate Court No.I, Virudhunagar, in Cr.M.P.No.3917 of 2022 in C.C.No.71 of 2022 dated 09.12.2022, is hereby **set aside**, of course, liberty is always available to the petitioner to move fresh petition setting relevant facts and circumstances and development in the trial process.

11.Accordingly, this criminal original petition is **allowed**.
Consequently, connected miscellaneous petitions are closed.

24.04.2023

Index : Yes/No
Internet : Yes/No
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To

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- 1.The Judicial Magistrate Court No.I, Virudhunagar.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN. J.

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