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Crl.O.P.(MD)No.12091 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.09.2023**

CORAM:

THE HONOURABLE DR.JUSTICE **D.NAGARJUN**

Crl.O.P.(MD) No.12091 of 2023

P.Srisankara Vikaramaraj

... Petitioner

Vs.

R.Sekar

..Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to set aside the order dated 22.05.2023 passed in Crl.M.P.No.2578 of 2023 in C.C.No.139 of 2022 and further direct the trial Court to order of recalling the non-bailable warrant issued to the petitioner without onerous condition imposed in the present impugned order.

For Petitioner : Mr.R.Anandharaj
for Mr.R.Tamilvanan

For Respondent : Mr.B.N.Raja Mohammed



ORDER

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This Criminal Original Petition is filed under Section 482 Cr.P.C, questioning the order passed by the learned trial Court in Crl.M.P.No.2578 of 2023 in C.C.No.139 of 2022 on 22.05.2023, imposing a condition to the petitioner to deposit a sum of Rs.4,00,000/- (Rupees Four Lakhs only), while recalling the bailable warrant.

2. The respondent/complainant has filed C.C.N.139 of 2022 before the trial Court against the petitioner/accused alleging that the petitioner has committed the offence punishable under Section 138 of Negotiable Instrument Act. After the evidence of the respondent/complainant is completed, at the stage of examination of the petitioner/accused under Section 313 Cr.P.C, the petitioner failed to appear before the Court and thereby, the trial Court has issued bailable warrant against the petitioner. The petitioner has moved an application in Crl.M.P.No.2578 of 2023 in C.C.No.139 of 2022 for cancellation of bailable warrant along with a petition to surrender on 22.05.2023. The said petition was allowed with the following condition:-

“Considering the cheque amount of Rs.20,00,000/-, the accused should pay a sum of Rs.4,00,000/- this is 20% cheque amount to the complainant within 30 days from today as



compensation. If the accused acquitted in the trial, the complainant should return the said amount to the accused with interest of Rate prevalent there.”

3. The learned counsel appearing for the petitioner submits that the condition imposed by the trial Court on the petitioner to deposit a sum of Rs.4,00,000/- (Rupees Four Lakhs only), while recalling the bailable warrant is onerous and therefore, he sought for setting aside the order of the trial Court, insofar as the above condition is concerned.

4. The learned counsel appearing for the respondent, on the other hand, submits that imposing condition on the petitioner to deposit a sum of Rs.4,00,000/ (Rupees Four Lakhs only) is not onerous as imposition of such condition has to be construed as grant of interim maintenance under Section 143 (A) of Negotiable Instrument Act.

5. Therefore, the question here to be considered is whether the trial Court can impose any condition while recalling the Non-bailable warrant.



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6. Section 70 Cr.P.C reads as under:-

70. Form of warrant of arrest and duration.

(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

7. Considering the above, on plain reading of Section 70(2) Cr.P.C., it is clear that there is no provision and section for imposing any condition while canceling the warrant. Thereby, the Court has no power to impose a condition to deposit the money for recalling of warrant.

8. Insofar as the other submission of the learned counsel appearing for the respondent that the direction of the trial Court to deposit a sum of Rs.4,00,000/- (Rupees Four Lakhs only) has to be construed as interim relief under Section 143(A) of NI Act, is concerned, there is no application filed by the respondent seeking compensation.

9. The question comes here that in case if the trial Court has not directed the petitioner to deposit a sum of Rs.4,00,000/- (Rupees Four



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Lakhs only) under Section 143(A) of Negotiable Instrument Act, there is no other provision which gives a right to the trial Court to direct the petitioner to deposit a sum of Rs.4,00,000/- (Rupees Four Lakhs only) further. At the time of cancellation of warrant, the Court is expected to see whether there are valid reasons in the absence of the petitioner on the day when he was directed to come. In this case, though the trial Court has allowed the application and recalled the warrant, a condition has been imposed on the petitioner to deposit a sum of Rs.4,00,000/- (Rupees Four Lakhs only). It is also to be seen that if the trial Court has imposed certain costs, that could have been appreciated to some extent. However, a direction to the petitioner to deposit a part of the check amount to the respondent while recalling the bailable warrant is not appreciable one.

10. Further, by way of the impugned order, the trial Court has directed the petitioner to pay a sum of Rs.4,00,000/- (Rupees Four Lakhs only) to the respondent/complainant. The Court would have at least directed the petitioner to deposit the said amount in the Court so that at the time of final disposal, in case if the petitioner is found guilty, then the said amount would have adjusted towards compensation, that may likely to avoid in favour of the respondent/complainant herein.



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11. In view of the discussion above, this Criminal Original Petition is allowed and the condition imposed by the trial Court on the petitioner to deposit a sum of Rs.4,00,000/- (Rupees Four Lakhs only) to the respondent/complainant is hereby quashed.

12. However, considering the circumstances that the case is posted for examination of the petitioner under Section 313 Cr.P.C, the trial Court is directed to dispose of C.C.No.139 of 2022 as expeditiously as possible not later than one month from the date of receipt of a copy of this order, if necessary, by listing the case on every alternate day.

Index : Yes/No
Internet : Yes/No
ssb

11.09.2023

Note: Issue order copy on **13.09.2023**.



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DR.D.NAGARJUN. J.

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