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Crl.R.C.No. 1612 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1612 of 2024

and

Crl.M.P.No.13366 of 2024

Nithish @ Nithish Kumar

... Petitioner

Vs.

D.Kavitha

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 & 401 of Cr.P.C., against the order passed by the learned Judicial Magistrate at Polur in Crl.M.P.No.6517 of 2024 dated 23.08.2024 in STC.No. 369 of 2023.

For Petitioner : Mr.S.Sriram

For Respondent : Ms.S.Priyanka



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ORDER

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The petitioner/accused in S.T.C.No.369 of 2023 has filed a petition under Section 72 of BNSS before the learned Judicial Magistrate, Polur in Crl.M.P.No.6517 of 2024 in S.T.C.No.369 of 2023 for recalling Non Bailable Warrant. The learned Judicial Magistrate, Polur by impugned order, dated 23.08.2024 allowed the petition recalling the Non Bailable Warrant but imposed a condition that the petitioner shall deposit 10% of the cheque amount (Rs.1,50,00,000/-) *i.e.*, Rs.15,00,000/- (Rupees fifteen lakhs only). Aggrieved over the same, the present criminal revision case is filed.

2.The learned counsel for the petitioner submitted that the claim of the respondent is that summons to the petitioner taken on 01.09.2023 and served to him, but not responded to the same. Thereafter, the Trial Court issued bailable warrant on 20.12.2023. On 25.07.2024, a memo filed by the respondent stating that Bailable Warrant was pending against the petitioner and process paid to execute the same, but unable to execute due to the warrant is bailable in nature and requested to convert the Bailable Warrant into Non Bailable Warrant. Recording the memo, the Trial Court converted the Bailable Warrant into Non Bailable Warrant. The petitioner filed a recall petition and



the Trial Court passed an onerous order

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3. According to the petitioner, the petitioner is not liable to pay the respondent a sum of Rs.1,50,00,000/-. The respondent not having financial capability to extend such huge amount to the petitioner. This, petitioner got sustainable grounds at the time of trial and he would disprove the claim of the respondent. In such circumstance, without liability, a cheque is projected against the petitioner and now condition imposing 10% towards cost would amount to pre-determining the issue and further the 10% is an onerous condition. During trial, imposing such conditions are deprecated.

4. The Apex Court and this Court had held that no onerous condition can be imposed. In support of his submission, the learned counsel for the petitioner referring to the judgment of the Apex Court in ***Inder Mohan Goswami and Another and State of Uttranchal and Others*** reported in ***(2007) 12 SCC 1*** submitted that the Apex Court had given guidelines under what circumstance bailable warrant and non-bailable warrant can be issued. In this case, no such circumstance exist. Further, the Apex Court recently in the case of ***Rakesh Ranjan Shrivastava Vs. State of Jharkhand and Another***



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reported in **(2024) 4 SCC 419** held that factors required to be considered and reasons should be recorded before any condition being imposed. In this case, no such reasons recorded. Hence, sought for setting aside the order. He further submit that the respondent had filed a petition under Section 143(A) of the Negotiable Instruments Act in CMP.No.7260 of 2024 before the Trial Court for imposition of interim compensation. The petitioner already filed a counter to it and listed for enquiry on 11.11.2024.

5. The learned counsel for the respondent strongly opposed the petitioner's contention stating that summons to the accused was served on 01.09.2023 and the postal cover returned with an endorsement accused had left. Thereafter, fresh notice was ordered on 03.11.2023. Fresh notice taken, it was received and after receipt of the notice, the petitioner failed to appear before the Trial Court and became evasive and following the case through proxy.

6. The petitioner issued a cheque for Rs.1,50,00,000/- and entire amount of the petitioner now got locked, even for the statutory notice he had not replied, stating cheque not issued for any liability but for the first time before



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this Court. Such defence is projected. The respondent financial capacity and petitioner relationship can be decided during trial. The learned counsel further submit that even after issuance ofailable warrant, petitioner not appeared and only after issuance of non-ailable warrant, petitioner appeared. The petitioner makes false contention as though the petitioner was suffering from illness and he could not appear on 23.08.2024. The petitioner not produced any medical records in support of his contention.

7. The respondent raised his objection and sought imposition of 20% of the cheque amount as cost. The Trial Court, considering the plea of the petitioner, imposed a reasonable amount of 10% which now the petitioner is challenged before this Court projecting, petitioner asked for interim compensation. In this case, it is not an interim compensation, it is only a condition to deposit 10% amount to the credit of the case before the Trial Court and if the petitioner proves his innocence, he can very well get back his amount. The petitioners conduct would prove that he is avoiding the Court and protracting the proceedings.



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8. The learned counsel for the petitioner at this stage submits that he is ready to co-operate with the Trial Court and entire trial can be completed within a period of three months and he will not be any reason for delay. Hence, the Trial Court is directed to complete the trial within a period of three months from the date of receipt of a copy of this order.

9. In view of the above, the impugned order directing the petitioner to deposit 10% of the cheque amount a onerous one and the same is set aside. Accordingly, this Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is closed.

23.10.2024

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Internet: Yes / No

Speaking / Non-speaking order

Nuetral Citation : Yes / No



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To

1.The Judicial Magistrate,
Polur, Tiruvannamalai District.

2.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

KKN

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