



Crl.RC.No.1636 of 2023

Crl.MP.No.19503 of 2023

in

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M.DHANDAPANI, J.

This Criminal Miscellaneous petition has been filed to set aside the order dated 26.09.2023 made in Crl.MP.No.15419 of 2023 in Crl.RC.No.1636 of 2023, suspending the sentence of imprisonment imposed on the accused and to cancel the bail granted in favour of the accused.

2. The case of the petitioner/complainant is that, the petitioner's company is registered with the Indian Newspaper Society and is dealing with various Government departments and it also deals with Post production works with production and entertainment companies. While so, the 2nd accused being the Director of the 1st accused company namely Media one Global Entertainment Ltd., approached the petitioner for venturing into post production of the film namely “Kochadaiyan” by posing Mediaone Global Entertainment as the fast upcoming entertainment company and the lease rights of the film will fetch a return of Rs.20,00,00,000/- plus minimum guaranteed profit amount of Rs.2,40,00,000/-, by virtue of the Memorandum of Understanding agreement dated 25.04.2014 entered into between them



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and the accused borrowed a sum of Rs.10,00,00,000/- and promised to repay the same on or before 21.05.2014 and promised to pay 20% of the sale commission in case the rights of the said movie is sold to any third party, in addition to the principal amount of Rs.10,00,00,000/- and in addition to the guaranteed profit share. In such circumstances, towards the part discharge of the liability, the accused issued a cheque bearing No.587789 dated 13.12.2014 for a sum of Rs.5,00,00,000/- and when the said cheque was presented for collection, the same was returned with an endorsement “Stop payment by the drawer” on 16.12.2014. The petitioner sent a legal notice dated 20.12.2014 and despite receiving the same on 22.12.2014, the accused failed to discharge the liability. Therefore, left with no other alternative, the petitioner filed a complaint under Section 200 Cr.P.C. in CC.No.5702 of 2016 for the offence under section 138 and 142 of Negotiable Instruments Act. After adjudication, the trial court, vide order dated 04.12.2021 convicted the accused for the offence u/s 138 of NI Act and was sentenced to undergo simple imprisonment for a period of six months and was ordered to pay a compensation of Rs.7,70,00,000/- and in default to undergo simple imprisonment for a further period of six months. Aggrieved by the same, the



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accused preferred an appeal in Crl.A.No.199 of 2021 and the lower appellate court, vide order dated 04.08.2023 confirmed the conviction and sentence imposed on the accused. Challenging the same, the accused filed a revision before this Court in Crl.RC.No.1636 of 2023 and pending the same, this Court, vide order dated 26.09.2023 made in Crl.MP.No.15419 of 2023 ordered for suspension of sentence imposed on the accused. Challenging the same, the petitioner has come up with this petition seeking to cancel the bail granted by the court, vide order dated 26.09.2023.

3. Mr.Abirchand Nahar, the petitioner/party-in-person submitted that, the accused borrowed a sum of Rs.10,00,00,000/- from the petitioner/complainant and he agreed to repay the same with 20% profit. However, till date, the accused had paid only a sum of Rs.8,74,00,000/- in toto. Thereby, for non-payment of the balance amount, the petitioner initiated civil proceedings before this Court in C.S.No.545 of 2015 and apart from that, the accused also issued the above said cheque towards discharge of part of the above liability and as the same was dishonoured, the petitioner filed a complaint in CC.No.5702 of 2016 which ended in conviction and the appeal



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against the same was also dismissed confirming the conviction and sentenced imposed by the trial court. Challenging the same, the accused filed a revision before this Court in Crl.RC.No.1636 of 2023. Though, it is the usual practice of this Court to suspend the sentence of imprisonment imposed on the accused only on condition that the accused deposits 50% of the cheque amount, however, this Court, vide order dated 26.09.2023 ordered for suspension of sentence imposed on the accused without imposing any condition with regard to deposit of certain percentage of the fine amount. Though the borrowing is of the year 2014, even after a lapse of 10 years, the accused had not discharged the entire liability and had deposited only a sum of Rs.25,00,000/- though the cheque is to the tune of Rs.5,00,00,000/-. Accordingly, he prayed for appropriate orders.

4. Per contra, learned Senior counsel appearing for the respondents submitted that, the total due is Rs.10,00,00,000/- in which, the respondents have already paid a sum of Rs.8,99,00,000/- and the balance amount is only Rs.1,01,00,000/-. Further, with regard to payment of alleged 20% profit, the same is the subject matter of the suit pending before this Court. It is the



further submission of the learned senior counsel that the dispute on hand relates to dishonour of cheque for a sum of Rs.5,00,00,000/-, but already towards the discharge, a sum of Rs.8,99,00,000/- had been paid and the cheque which was given as guarantee had been deposited with the bank to falsely implicate the accused in the offence. Considering all the above said facts, this court had granted suspension of sentence in favour of the respondents and the same does not warrant interference of this court.

5. Heard learned counsel on either side and perused the material documents placed on record.

6. It is the case of the petitioner that the cheque dishonoured was for a sum of Rs.5 Crores, which has to be paid by the accused, but the respondents submit that already a sum of Rs.8,99,00,000/-. In fact, even in the case relating to dishonour of cheque, the courts below have taken the face value of the cheque and towards its dishonour had directed payment of Rs.7,70,00,000/-, which includes the Rs.5 Crore along with interest. However, the factum of the payment alleged to have been made by the



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respondents to an extent of Rs.8,99,00,000/- requires consideration in this revision and without considering the same, it would not be in the interest of justice to issue any direction in favour of any one of the parties.

7. In such view of the matter, the borrowing being to an extent of Rs.10,00,00,000/- of which the respondents claim that they have paid Rs.8,99,00,000/- and the balance payable is only to an extent of Rs.1,01,00,000/-, without going into the merits of the amount which is to be paid by the respondents to the petitioner and also keeping in mind the suit pending with regard to the profit to the extent of 20%, this Court is of the considered view that on the respondents depositing the amount of Rs.1,01,00,000/- (Rupees One Crore and One Lakh only) within the time stipulated by this Court, the suspension of sentence granted in their favour could be allowed to be continued pending consideration of the revision.

8. Accordingly, this Court directs the respondents to deposit a sum of Rs.1,01,00,000/- (Rupees One Crore and One Lakh only) to the credit of CC.No.5702 of 2016 on the file of the Metropolitan Magistrate, Fast Track



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Court-I, Allikulam, Egmore, Chennai within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the suspension of sentence granted in favour of the respondents shall continue. Failure on the part of the respondents to deposit the aforesaid amount within the time stipulated above, the suspension of sentence granted by this Court vide order dated 26.09.2023 made in Crl.MP.No.15419 of 2023 shall stand automatically recalled and it would be open to the court below to take appropriate action against the respondents in accordance with law with regard to the conviction and sentence suffered by the respondents.

9. This Criminal miscellaneous petition stands disposed of with the aforesaid observations and directions.

18.07.2024

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Note to office: Issue order copy on 29.07.2024.



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