



C.R.P. (MD) No. 871 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **03.04.2024**

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKEAVALU

C.R.P. (MD) No. 871 of 2024
and
C.M.P. (MD) No. 4854 of 2024

Shanthi

... Petitioner

Vs.

Joseph Veluchamy

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the order dated 04.01.2024 passed in I.A. No. 01 of 2022 in O.S. No. 90 of 2021 on the file of the Special District and Sessions Judge (PCR), Dindigul and allow this civil revision petition.

For Petitioner : Mr. T.Satheesh

ORDER

This Civil Revision Petition invoking Article 227 of the Constitution of India has been filed challenging the order dated 04.01.2024 passed in I.A. No. 01 of 2022 in O.S. No. 90 of 2021 (hereinafter referred to as the

1/10



C.R.P. (MD) No. 871 of 2024

'impugned order' for short) on the file of the Special District and Sessions Judge (PCR), Dindigul (hereinafter referred to as the 'Trial Court' for short)

2. Heard Mr. T.Satheesh, Learned Counsel appearing for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.

3. The suit in O.S. No. 90 of 2021 had been laid before the Trial Court for recovery of a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) due by the Defendant from the Plaintiff under the undated cheque bearing No.387924 drawn on Canara Bank, Thadicombu Branch. The Plaintiff had already initiated criminal proceedings in C.C.No. 128 of 2018 before the Chief Judicial Magistrate, Dindigul, against the Defendant under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act' for short), in respect of the same cheque. In that backdrop, the Defendant had filed application under Rule 11(d) of Order VII of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC' for short) in the Trial Court for rejection of the plaint in O.S. No. 90 of 2021 contending that the Plaintiff cannot pursue for the same relief in two proceedings as it would be



C.R.P. (MD) No. 871 of 2024

opposed the principles of natural justice and amount to double jeopardy against him. The Trial Court by the impugned order has rejected that application.

4. It is beyond any cavil that the recovery by way of suit is a civil proceeding and the prosecution under Section 138 of NI Act is essentially criminal in nature with intent to punish the defaulter by imprisonment or fine or both. The mere circumstance that the fine amount could be twice the value of the cheque is no guarantee for the Plaintiff that the entire amount of liability under the cheque with interest could be recovered from the Defendant. It would also assumes significance here that even though the Criminal Court could impose fine on the accused on his conviction, the procedure for granting compensation is discretionary under Section 357 of the Code of Criminal Procedure, 1973, which would not necessarily follow when fine is imposed. The Hon'ble Supreme Court of India in ***Ajay Kumar Radheshyam Goenka -vs- Tourism Finance Corporation of India Ltd.***, [(2023) 10 SCC 545], has explicated this legal position in the following words:-



17.We are unable to appreciate the plea of the learned counsel for the appellant that because Section 138 of the NI Act proceedings arise from a default in financial debt, the proceedings under Section 138 should be taken as akin to civil proceedings rather than criminal proceedings. We cannot lose sight of the fact that Section 138 of the NI Act are not recovery proceedings. They are penal in character. A person may face imprisonment or fine or both under Section 138 of the NI Act. It is not a recovery of the amount with interest as a debt recovery proceedings would be. They are not akin to suit proceedings.

5. At this juncture, it would be relevant to extract the principles on the exercise of the jurisdiction of the High Court under Article 227 of the Constitution as formulated by the Hon'ble Supreme Court in the decision in ***Shalini Shyam Shetty -vs- Rajendra Shankar Patil*** [(2010) 8 SCC 329], which reads as follows:-



- (a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.
- (b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.
- (c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.



- (d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in ***Waryam Singh -vs- Amarnath*** (AIR 1954 SC 215) and the principles in ***Waryam Singh -vs- Amarnath*** (AIR 1954 SC 215) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.
- (e) According to the ratio in ***Waryam Singh -vs- Amarnath*** (AIR 1954 SC 215), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, “within the bounds of their authority”.
- (f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.



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C.R.P. (MD) No. 871 of 2024

- (g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.
- (h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised.
- (i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in ***L. Chandra Kumar -vs- Union of India*** [(1997) 3 SCC 261] and therefore abridgment by a constitutional amendment is also very doubtful.



- (j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.
- (k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised *suo motu*.
- (l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.
- (m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly



C.R.P. (MD) No. 871 of 2024

functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

Having regard to the aforesaid legal position viz-a-viz the impugned order and the materials placed on record, there does not appear to be any infirmity warrant any interference in the exercise of the supervisory jurisdiction by this Court.

In the result, this Civil Revision Petition, which is devoid of merits, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

03.04.2024

Index : Yes/No

NCC : Yes/No

Index : Yes/No

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9/10



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C.R.P. (MD) No. 871 of 2024

P.D.AUDIKESAVALU, J.

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TO:

- 1.The Special District and Sessions Judge (PCR), Dindigul.
- 2.The Section Officer (VR Section),
Madurai bench of Madras High Court,
Madurai.

C. R. P. (MD) No. 871 of 2024

03.04.2024

10/10