



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Monday, the Eleventh day of November Two Thousand and Twenty Four

PRESENT

The HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

CRL MP(MD) No.45 of 2024

in

CRL OP(MD) No.6946 of 2023

K.SEKAR

... PETITIONER/PETITIONER

Vs

M.PRABAKARAN

... RESPONDENT/PETITIONER

Prayer:

Criminal Miscellaneous Petition filed under Section 482 of Cr.P.C.,to recall the order passed by this Honble Court in Crl.OP.(MD).No.6946 of 2023 on 25.9.2023.

Order : This Criminal Miscellaneous Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Thiru.S.Rajamohamed for M/s.Mohamed Associates,Advocate for the Petitioner and of Thiru.R.Udhaya Kumar,Advocate for the Sole Respondent,this court made the following order:

This Criminal Miscellaneous Petition is filed to recall the order dated



WEB COPY

2. CrI.O.P.(MD) No.6946 of 2023 was filed to call for the records relating to the petitioner in a private complaint in S.T.C.No.644 of 2022 on the file of the Judicial Magistrate Court, Melur, Madurai District, and to quash the same.

3. S.T.C.No.644 of 2022 is a private complaint filed under Section 200 of the Code of Criminal Procedure, complaining the offence under Section 138 of the Negotiable Instruments Act.

4. The case of the complainant is that the accused who is known to him approached the complainant on 13.06.2022 and borrowed a sum of Rs.9 lakhs for business improvement and also for urgent expenses and family needs, which was advanced as cash. In consideration thereof, the accused had issued a post-dated cheque for the said sum of Rs.9 lakhs vide cheque bearing No.964807 dated 13.06.2022 drawn at State Bank of India, Thirubhuvanam Branch. The same was presented for collection on 13.06.2022. However, the cheque was dishonoured with an endorsement of 'funds insufficient' on 08.07.2022. The complainant issued a notice on 09.07.2022 to the accused calling upon him to make payment of the amount due to him within 15 days and the said legal notice was received on 11.07.2022. Even after the expiry of time, the amount was not paid and hence, the complaint.



5. After the complaint was taken on file, the accused in the private complaint viz., M. Prabhakaran filed the above Criminal Original Petition to quash the case, on the ground that the legal notice calling upon him to pay the sum due under the cheque was received by him only on 11.07.2022 and there is 15 days for the accused to pay the money. If the money is not paid within the specified time, the offence is completed. The 15-day time expires only on 26.07.2022. However, even before the expiry of the said period, on 22.07.2022 itself, the complaint is filed and therefore, the complaint is liable to be quashed.

6. Since there was a factual contest regarding the date of presentation of the complaint, as it is contended by the accused that the complaint was presented on 22.07.2022 and it is contended by the complainant that it was presented only on 27.07.2022, by an earlier order and by an order dated 12.08.2024, a report was called for from the learned Judicial Magistrate, Melur, to inform this Court, on what date the S.T.C.No.644 of 2022 was filed. It is essential to verbatim extract this order of this Court dated 12.08.2024, which reads as under:-

“This criminal miscellaneous petition has been filed seeking
to recall the orders dated 25.09.2023 passed by this Court in

Crl.OP(MD).No.6946 of 2023.

<https://www.mhc.tn.gov.in/judis>

2. It is submitted by the learned counsel for the petitioner



WEB COPY

that the petitioner has filed S.T.C No.644 of 2022 against the respondent on the file of the Judicial Magistrate, Melur alleging that the respondent has committed an offence punishable under Section 138 of the Negotiable Instrument Act. The respondent who is the accused in S.T.C No.644 of 2022 has filed CrI.OP.No. 6949 of 2023 seeking quashment of S.T.C No.644 of 2022. On hearing both sides, this Court as per order dated 25.09.2023 has quashed the S.T.C No.644 of 2022.

3. The present petition is filed to recall the said orders of quashment dated 25.09.2023 stating that the said orders have been passed inadvertently by coming to a conclusion that the petitioner/complainant has filed original complaint on 25.07.2022 insofar as, originally complaint was filed before the Court on 27.07.2022.

4. I have gone through the orders passed by this Court on 25.09.2023 in CrI.OP.No.6946 of 2023 carefully. This Court in the said orders has observed at paragraph 16 of the order that the petitioner has issued statutory notice to the respondent demanding him to pay an amount under the dishonour cheque was served on 11.07.2022 and since the complaint under Section 138 ibid was filed on 22.07.2022 prior to completion of 15 days



WEB COPY

from the date of service of notice to the respondent/accused, the S.T.C.No.644 of 2022 the case filed by the petitioner/complainant against the respondent/accused was quashed.

5. Now, according to the petitioner, S.T.C.No.644 of 2022 was filed on 22.07.2022 before the concerned Court and not on 27.07.2022 as observed by this Court in the orders dated 25.09.2023. I have carefully verified the copy of the S.T.C.No.644 of 2022 filed on the file of the Judicial Magistrate, Melur and from that the Court rubber stamp with date is not clear as the rubber stamp is overlapping. If at all the complaint is filed on 22.07.2022 the petitioner has no case. However, as submitted by the learned counsel for the petitioner if the complaint is filed by the petitioner on 27.07.2022 then the complaint is filed well subsequent to 15 days after reply of the notice by the accused and therefore, quashment should not have been done.

6. Therefore, in order to get the clarity as to on what date actually the petitioner has filed a complaint in S.T.C.No.644 of 2022, this Court is of the opinion that a report for the learned Judicial Magistrate, Melur can be called for. Accordingly, the

Registry is directed to call for report from the learned Judicial



Magistrate, Melur asking him to inform this Court on what date

S.T.C No.644 of 2022 was filed, more precisely, whether was it

filed on 22.07.2022 or 27.07.2022 or any other date.

7. List this matter on 05.09.2024 before the appropriate Bench on receipt of copy of report from the Judicial Magistrate, Melur.”

(emphasis supplied)

7. Thereafter, the learned Judicial Magistrate, Melur submitted a report whereby it is stated that the complaint was presented only on 27.07.2022. The entire report submitted by the learned Judicial Magistrate is extracted hereunder:-

“I humbly submit that, the private complaint U/s. 138 and 142 of Negotiable Instruments Act has been filed by the complainant K.Sekar, S/o.Karuppanan, against the accused M.Prabhakaran, S/o.Muthuraman servai before this Court on 27.07.2022 and the same has been taken on file in STC 644/2022.

This is for my humble submission for your kind consideration.”

8. It seems from the daily orders sheet that arguments were concluded in the

Criminal Original Petition on 24.08.2023. Thereafter, the Judgment was pronounced

<https://www.mhc.tn.gov.in/judis>

on 25.09.2023. This Court had allowed the petition to quash the complaint. The



petition to quash is allowed, on the only ground that the complaint has been presented even before the expiry of the 15 days. A finding is given as if the learned Judicial Magistrate, Melur, had reported that the complaint was filed on 25.07.2022. The relevant finding is contained in paragraphs No.15 and 16 which are extracted hereunder:-

“15. In the case on hand, as per the contents of the complainant, the petitioner has issued a cheque for Rs.9 lakhs vide cheque dated 13.06.2022, the said cheque was presented for collection in the bank on 13.06.2022 and was returned on 08.07.2022 to the respondent complainant with an endorsement “Funds Insufficient”. The respondent/complainant aggrieved by the dishonour of cheque has issued legal notice dated 09.07.2022. The said notice was admittedly served on 11.07.2022. Therefore, from the date of serving of notice on the petitioner/accused on 11.07.2022, the respondent/complainant shall give 15 clear days to see if the petitioner/accused would pay the money under the dishonoured cheque and within 15 days if he fails to return the money then the respondent/complainant is at liberty to file complaint within 30 days thereafter.

16. In case if within 15 days from the date of serving if



WEB COPY

the accused given a reply denying the request of the petitioner then cause of action arises from the date of receiving the reply notice even if 15 days have not been expired and then the complainant is at liberty to file complaint within 30 days thereafter. Here is the case that on 11.07.2022 the petitioner has received legal notice therefore the respondent/complainant shall wait until 26.07.2022 to see whether the petitioner pays the money back otherwise he is at liberty to filed complaint on 27.07.2022. However, admittedly complaint was filed on 22.07.2022. As per the copy of the complaint admittedly the complaint was presented by the complainant before the Judicial Magistrate Court, Melur on 25.07.2022. Therefore, the complaint filed even prior commission of offence."

(emphasis supplied)

Feeling aggrieved thereby, the present petition is filed to recall the order.

9. It is the contention of the petitioner that he filed the complaint only on 27.07.2022. The petitioner has also applied for a certified copy, in which the date stamp is clearly visible and it is only on 27.07.2022. The report submitted by the Judicial Magistrate also states that the complaint was filed only on 27.07.2022.

<https://www.mhc.tn.gov.in/judis>

Therefore, an error which is made by this Court, this Court misdirected itself and



quashed the case and hence the petition.

WEB COPY

10. The petition is resisted by the learned counsel appearing on behalf of the respondent – accused that the Criminal Court does not have the power to review. This recall application is a review in disguise. Even if the petitioner is aggrieved, he has to approach the higher fora and this Court cannot review its own order, even for erroneous findings.

11. Heard, Mr.Raja Mohamed, the learned counsel for the petitioner and Mr.R.Udhaya Kumar, the learned counsel for the respondent.

12. The learned counsel appearing on behalf of the petitioner would rely upon the Judgment in Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd.,¹ more specifically rely upon paragraph No.23 to contend that where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has inherent power to recall its order. The learned counsel would also rely upon the Judgment of the Full Bench of the High Court of Andhra Pradesh in Yanala Malleshwari & Others Vs. Ananthula Sayamma & Others,² to contend that all the Courts and judicial forums in India have inherent powers to recall or revoke the order when the order comes to be passed on the reason of fraud played on the Court.



13. The learned counsel would further rely upon the Judgment of the Supreme Court in Vishnu Agarwal Vs. State of U.P. and another,³ to contend that Section 362 of the Cr.P.C., cannot be considered in a rigid and over technical manner to defeat the ends of justice.

14. Per contra, Mr.R.Udhaya Kumar, the learned counsel appearing on behalf of the respondent would rely upon the Judgment in Mr.A.G.Ponn Manickavel Vs. The Additional Chief Secretary to Government and Others (Crl.M.P. Sr.No.39510 of 2022 in Crl.O.P.No.18583 of 2019 dated 13.09.2022) to contend that the bar under Section 362 of Cr.P.C., squarely applies and there is no power of review for the Criminal Court. He would further rely upon the Judgment of this Court in S.Velusamy Vs. Inspector of Police (Crl.M.P.No.17973 of 2022 in Crl.RC.No.1223 of 2022 dated 20.07.2023) to contend that if only the order is passed without hearing the parties concerned or if the order is obtained by abuse of process of the Court, the Criminal Courts can exercise the power to recall the Judgment. In the absence thereof, pointing out any error which is made by the Court while deciding the case, cannot be rectified by way of recall petition.

15. He would further submit that even concerning the enforcement

<https://www.mhc.tn.gov.in/judis>



proceedings, wherein a division bench had altered the order after pronouncement but before signing, the matter is referred to the larger Bench for adjudication by the Hon'ble Supreme Court of India in M.S.Jaffer Sait Vs. The Directorate of Enforcement (S.L.P. (Crl.) No.12758 of 2024). Therefore, this Court should at least wait for the larger Bench's reference to be answered authoritatively by the Hon'ble Supreme Court.

16. I have considered the rival submissions made on either side and perused the material records of the case.

17. It is the trite proposition that the Criminal Court does not have the power to review its Judgment and there is an express bar under Section 362 of Cr.P.C.,. However, a petition to recall the order can be entertained by the Criminal Court in a very narrow campus as enunciated by the Hon'ble Supreme Court of India. Firstly, in the Judgment in State of Punjab Vs.Davindar Pal Singh Bhullar and Others,⁴ the Supreme Court of India has held as follows and it is relevant to extract paragraph No.46:

“46. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would



really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 CrPC would not operate. In such an eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault.”

18. The Hon’ble Supreme Court of India in Ganesh Patel Vs. Umakant Rajoria⁵ has held as follows:-

“8. This application for recall of the order was maintainable as it was an application seeking a procedural review, and not a substantive review to which Section 362 of the Criminal Procedure Code, 1973, would be attracted.[Grindlyas Bank Ltd. Vs. Central Government Industrial Tribunal and Ors. (1980 (supp) SCC 420). On the aspect of the difference between recall and review and when an order of recall can be passed reference can be made to Budhia Swain and Others Vs. Gopinath Deb and Others, (1999) 4 SCC 396.”

19. Similarly in the Judgment of the Hon’ble Supreme Court of India in <https://www.mhc.tn.gov.in/judis>



Vishnu Agarwal's case (cited supra), the Supreme Court had held as follows and it is essential to extract paragraph No.8:-

“In our opinion, Section 362 cannot be considered in a rigid and over technical manner to defeat the ends of justice. As Brahaspati has observed:

“Kevalam Shastram Ashritya Na Kartavyo Vinirnayah
Yuktiheeney Vichare tu Dharmahaani Prajayate”

which means:

“The Court should not give its decision based only on the letter of the law.

For if the decision is wholly unreasonable, injustice will follow.”

20. Thus, from a cumulative reading of the above Judgment, it is clear that while no power of review is exercisable by the Criminal Court and the review petition cannot also be disguised as a recall petition, a Criminal Court can recall or modify its order, firstly, if it was passed without affording an opportunity, in violation of the principles of natural justice, and the court itself committed an error on its own or misled by any gross abuse leading to grave injustice to any party.

21. In this case, the typographical error of mentioning the date as 25.07.2022 instead of 27.07.2022 led to the arithmetic error of calculating the period as 14 days



instead of 16 days which resulted in allowing the Criminal Original Petition, which otherwise has to be dismissed. The error was committed by the Court while considering the date mentioned in the report of the Trial Court. Therefore, this is not a question of any substantive review in the instant case. On the other hand, it is procedural and arises out of the Court itself committing a clerical/arithmetic mistake, which is not attributable to the petitioner.

22. As a matter of fact, the petitioner was not also heard in detail by furnishing him a copy of the report of the learned Judicial Magistrate, in which case, the petitioner would have categorically pointed out that the complaint was presented after a period of 15 days, thus it is a violation of principles of natural justice also.

23. Therefore, I am of the view that this case warrants a circumstance in which the limited power to recall the order is to be exercised. Accordingly, the CrI.M.P. (MD) No.45 of 2024 stands allowed. The order dated 25.09.2023 in CrI.O.P. (MD) No.6946 of 2023 originally passed is recalled and consequently CrI.O.P. (MD) No. 6946 of 2023 stands dismissed.

sd/-
11/11/2024

/ TRUE COPY /

/ /2024
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



WEB COPY
TO

1 THE JUDICIAL MAGISTRATE COURT
MELUR,MADURAI DISTRICT

2 THE GOVERNMENT PLEADER,
MADURAI BENCH OF MADRAS HIGH COURT,MADURAI.

COPY TO:

1 THE SECTION OFFICER,V.R. SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

2 THE SECTION OFFICER,NATIONAL INFORMATION CENTER,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

(Kindly be Re-call the order in Crl OP(MD)No.6946 of 2023 on 25/09/2023)

+1CC to M/s.Mohamed Associates,Advocate(SR.No.63753)

ORDER DATED:11/11/2024

=====

ORDERs

=====

CRL MP(MD) No.45 of 2024
GIVING DIRECTION AND ETC.
AS STATED WITHIN

MGJ(12.12.2024) 15P 7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023