

CrI.R.C.No.1622 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2025

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.1622 of 2023

G.Yuvaraj

S/o.Gurusamy

... Petitioner

..VS..

P.Sathishkumar

S/o.M.A.Palanisamy

... Respondent

Criminal Revision Case filed under Sections 397 read with 401 of Cr.P.C, to set aside the order dated 26.06.2023 made in C.M.P.No.8666 of 2023 in STC.No.485 of 2016 on the file of the Judicial Magistrate Court No.III, Erode by allowing this criminal revision petition.

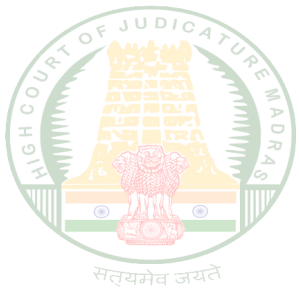
For Petitioner : Mr.P.Kannan Kumar

For Respondent : Mr.D.Selvaraju

ORDER

This Criminal Revision Petition is filed against the order dated 26.06.2023 passed in C.M.P.No.8666 of 2023 in STC.No.485 of 2016 by the Judicial Magistrate-III, Erode.

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2. Learned counsel for the petitioner submitted that the respondent filed a private complaint under Section 138 read with 142 of Negotiable Instruments Act, 1881, as amended by Act 55 of 2002 and also under Section 420 IPC before the learned Judicial Magistrate-III, Erode in S.T.C.No.485 of 2016. The case of the respondent-complainant, as per the complaint filed before the trial Court is that, he was alleged to have given a sum of Rs.4,50,000/- as a hand loan to the petitioner-accused on 02.03.2016, but the accused failed to repay the same within a stipulated time, and hence, he issued a cheque. When the respondent-complainant presented the cheque for collection, it was returned with an endorsement "Account closed" through a Return Memo, dated 18.03.2016 and after completing the legal requirements, he filed the private complaint.

3. Learned counsel for the petitioner further submitted that the petitioner herein has filed an insolvency petition in I.P.No.26 of 2016 before the II Additional Sub Court, Erode, where, the petitioner has been declared as "insolvent" on 22.03.2021. When once the petitioner was declared as "insolvent" by the Civil Court, the continuation of criminal proceedings for recovery of money on the insolvent, will not solve the



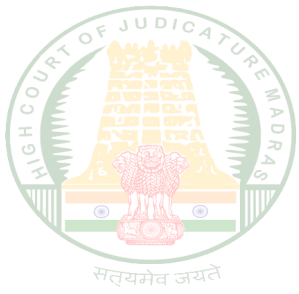
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purpose and hence, the petitioner filed a petition invoking Section 239 Cr.P.C., in Crl.M.P.No.8666 of 2023, seeking to discharge him from the case in S.T.C.No.485 of 2016. However, the learned Magistrate failed to consider the same and dismissed the petition on 26.06.2023. Therefore, the impugned order passed by the Court below may be set aside.

4. Learned counsel appearing for the respondent-complainant submitted that though the petitioner-accused has been shown as one of the respondents in the insolvency proceedings i.e., I.P.No.26 of 2016 and that the Insolvent Court, *vide* order dated 22.03.2021 had declared the petitioner as an insolvent, but the same has not been brought to the knowledge of the trial Court and he has also undergone the ordeal of trial and after completion of recording evidence and when the matter was posted for arguments, at that time, the petitioner filed the discharge petition. The learned Magistrate, after appreciating the entire materials, dismissed the petition, which does not warrants any interference by this Court.

5. Heard both sides and perused the materials available on record.

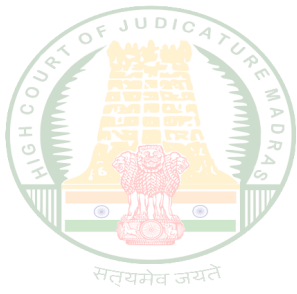


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6. Though the respondent filed a private complaint against the petitioner for the offence under Section 138 of N.I.Act in the year 2016, pending private complaint, the petitioner filed insolvency petition in I.P.No.26 of 2016 on the file of the Subordinate Court, Erode. The learned Judge, by order dated 22.03.2021 declared the petitioner as an "insolvent". Soon after the order passed in I.P.No.26 of 2016, the petitioner has not filed any petition before the learned Magistrate, but he has participated in the trial proceedings and after completion of recording evidence, the matter was posted for arguments, and at that stage, the petitioner filed the petition invoking Section 239 Cr.P.C. The main defence taken by the petitioner-accused is that when once the petitioner was declared as an "insolvent", criminal proceedings cannot be proceeded against the petitioner.

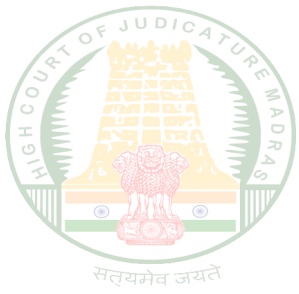
7. It is settled proposition of law that even criminal proceedings can be proceeded against any insolvent. At this juncture, it would be useful to refer the judgment of the Hon'ble Supreme Court in the case of ***Rakesh Bhanot Vs. M/s.Gurdas Agro Pvt., Ltd [Crl.A.No.1607 of 2025 etc., batch]***. The relevant paragraph is extracted hereunder :



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".....17. For the foregoing discussion, we are of the opinion that the object of moratorium or for that purpose, the provision enabling the debtor to approach the Tribunal under Section 94 is not to stall the criminal prosecution, but to only postpone any civil actions to recover any debt. The deterrent effect of Section 138 is critical to maintain the trust in the use of negotiable instruments like cheques in business dealings. Criminal liability for dishonoring cheques ensures that individuals who engage in commercial transactions are held accountable for their actions, however subject to satisfaction of other conditions in the N.I.Act, 1881. Therefore, allowing the respective appellants/ petitioners to evade prosecution under Section 138 by invoking the moratorium would undermine the very purpose of the N.I.Act, 1881, which is to preserve the integrity and credibility of commercial transactions and the personal responsibility persists, regardless of the insolvency proceedings and its outcome."



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8. It is also settled proposition of law that Section 239 Cr.P.C., is indeed applicable only to warrant cases on police report, but not to the summons cases. The present case is filed based on the private complaint, which is quasi civil in nature.

9. On a reading of the entire materials, it is seen that in the present case, there were parallel proceedings, i.e., one is pending before the learned Magistrate under Section 138 of N.I.Act and other is in insolvency case in I.P.No.26 of 2016. Though insolvency petition was decided on 22.03.2021 itself, the petitioner has not brought the same to the knowledge of the trial Court and without bringing the same to the knowledge of the trial Court, he could not have participated in the trial. Subsequently, at the stage of arguments, the petitioner invoked Section 239 Cr.P.C. Therefore, the above facts reveal that only to protract the case and give trouble to the respondent, the petitioner has approached the Court below and filed the petition under Section 239 Cr.P.C.

10. For the foregoing reasons, this Court finds that the trial Court has rightly dismissed the petition and there is no merit in this revision.



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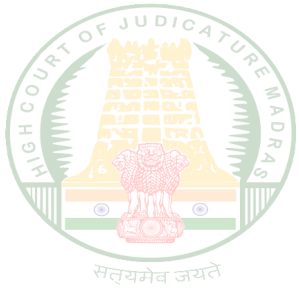
Accordingly, this revision petition is dismissed. Consequently, connected miscellaneous petition is closed. It is open to the petitioner to take all his defence before the learned Magistrate, where the proceedings under Section 138 of N.I.Act are pending.

16.04.2025

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation Case : Yes/No
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To

The Judicial Magistrate-III
Judicial Magistrate Court-III,
Erode.



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P.VELMURUGAN, J.

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