



Crl.O.P.No.28669 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2025

PRONOUNCED ON : 02.04.2025

CORAM

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.28669 of 2024

R.Arunkumar ... Petitioner/Defacto complainant
Vs.

1. State Rep. by
The Inspector of Police,
Guduvanchery Police Station,
Kancheepuram District.
[Cr.No.111 of 2024] ... 1st Respondent/Complainant

2. Fatima Ezhilarasi ... 2nd respondent / A2

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C.
/ u/s.528 of BNS, to call for the records connected with the order dated
29.10.2024 in Crl.M.P.No.3189 of 2024 on the file of the learned
Principal District and Sessions Judge Chengalpattu in Crl.M.P.No.2958
of 2024 on the file of the Principal District and Sessions Judge and set
aside the same as illegal.

For Petitioner : Mr.S.Mohamed Ansar

For Respondents : Mr.S.Santhosh (for R1)
Government Advocate (Crl.Side)
Mr.D.Saikumaran (for R2)



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ORDER

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The defacto complainant has filed this petition seeking to set aside the order passed by the learned Principal District and Sessions Judge, Chengalpattu in Crl.MP.No.3189 of 2024, refusing permission to the defacto complainant to withdraw an amount of Rs.10 Lakhs deposited by the 2nd respondent/A2, pursuant to the direction in the bail order.

2. (i) The learned counsel for the petitioner/defacto complainant submitted that this Court had granted anticipatory bail to the first accused on 26.07.2024 in Crl.OP.No.13078 of 2024, on the condition that the first accused has to deposit a sum of Rs.7 Lakhs to the credit of Cr.No.111 of 2024 and on such deposit, the petitioner/defacto complainant was permitted to withdraw the same, on filing an undertaking affidavit and proper identification and acknowledgement.

(ii) The learned counsel for the petitioner/defacto complainant further submitted that the 2nd respondent herein/A2, was granted bail by the learned Principal District and Sessions Judge, Chengalpattu, vide order dated 15.10.2024 made in Crl.MP.No.2958 of 2024 on condition

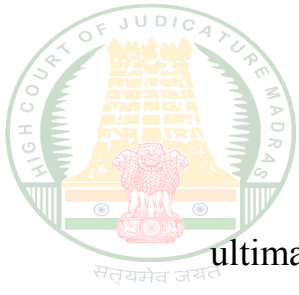


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that 2nd respondent/A2, deposits a sum Rs.10 Lakhs to the credit of Cr.No.111 of 2024 and the said condition has been complied with by the 2nd respondent/A2.

(iii) The learned counsel for the petitioner submitted that the petitioner therefore filed Crl.MP.No.3189 of 2024 before the trial Court seeking permission to withdraw the amount of Rs.10 Lakhs deposited by the 2nd respondent herein/A2 as was directed by this Court in Crl.OP.No.13078 of 2024, in respect of the amount deposited by the first accused, as he had suffered a wrongful loss of Rs.37,50,000/-. The said petition was dismissed by the trial Court vide the impugned order dated 29.10.2024. Hence, this petition.

3 (i) The 2nd respondent/A2, however, vehemently opposed the prayer made by the petitioner stating that the 2nd respondent/A2 had not cheated the defacto complainant of any money; that the first accused had gained monetarily; that the 2nd respondent had not gained monetarily; that if the money is now returned to the petitioner/defacto complainant, it would be difficult for the 2nd respondent/A2 to realise the money, if



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ultimately she is found not guilty by the trial Court.

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(ii) The learned counsel for the 2nd respondent further submitted that the status report filed by the 1st respondent stating that Rs.12,50,000/- was credited to the account of the 2nd respondent, is false and therefore, grave hardship and loss would be caused to the 2nd respondent if the money is directed to be released to the petitioner.

(iii) The learned counsel for the 2nd respondent further submitted that the 2nd respondent had lodged the first complaint of cheating against the first accused and if she was guilty, there was no necessity for her to lodge a complaint.

4. The learned Government Advocate (Crl.Side), appearing for the 1st respondent/State, however submitted that the 2nd respondent/A2 is a Managing Partner in a firm by the name FX Yogi Advisors & Consultants, and though the status report states that the money was transferred to the account of the 2nd respondent/A2, it was actually transferred to the accounts of the firm in which the 2nd respondent/A2 played a vital role.



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5. Admittedly, this Court had directed the defacto complainant viz., the petitioner herein to withdraw Rs.7 Lakhs which was deposited by the first accused pursuant to a conditional order on filing an affidavit of undertaking. Since the 2nd respondent had obtained anticipatory bail by deposit of Rs.10 Lakhs, the 2nd respondent also would be unable to withdraw the same until the conclusion of the proceedings. The defacto complainant has lost a sum of Rs.37,50,000/-. Hence, considering the aforesaid facts, this Court is of the view that the said amount can be permitted to be withdrawn by the defacto complainant viz., the petitioner herein. At the same time, the rights of the 2nd respondent/A2 has to be safeguarded. If the 2nd respondent is ultimately found not guilty, by the trial Court or if the first respondent does not file a positive final report against the 2nd respondent, the petitioner shall refund the sum of Rs.10,00,000/- with interest at the rate of 7.5% per annum, to the 2nd respondent/A2.

6. Accordingly, it is ordered as follows:

(i) The order dated 29.10.2024 in Crl.M.P.No.3189 of 2024 on the file of the learned Principal District and Sessions Judge, Chengalpattu, is set aside.



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(ii) the petitioner/defacto complainant is permitted to withdraw Rs.10 Lakhs [Rupees Ten Lakhs only] deposited by the 2nd respondent/A2 and lying in the credit of Cr.No.111 of 2024, on filing an affidavit of undertaking before the trial Court that he would pay the said sum of Rs.10 Lakhs to the 2nd respondent with interest at the rate of 7.5% per annum (from the date of withdrawal to the date of payment), in the event of either the 1st respondent filing a negative final report against the 2nd respondent or if the trial Court discharges or acquits the 2nd respondent/A2.

(iii) The wife of the petitioner/defacto complainant shall also file an affidavit guaranteeing the due repayment of the abovesaid sum to the 2nd respondent.

7. With the above directions, the Criminal Original Petition is allowed.

02.04.2025

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SUNDER MOHAN., J.

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To

- 1.The Principal District and Sessions Judge,
Chengalpattu
2. The Inspector of Police,
Guduvanchery Police Station,
Kancheepuram District.
3. The Public Prosecutor,
High Court of Madras.

Pre-delivery order in
Crl.O.P.No.28669 of 2024



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