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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.01.2025

Pronounced on : 18.02.2025

CORAM

THE HONOURABLE MR JUSTICE P.VADAMALAI

CRL MP(MD) NO. 14357 of 2024

IN

CRL RC(MD) NO. 1048 OF 2024

P.Shajahan
S/o. Pakkirmaideen,
No. 2/413, 8th Cross Street,
Melakaveri Jamiya Nagar,
Kumbakonam,
Thanjavur District.

... Petitioner / Respondent

Vs.

R.Jayaraman
S/o.Ramasamy,
No.E1/25/5 Greenland Apartments,
Annamalai Nagar, Thillai Nagar,
Thiruchirappalli,
Thiruchirappalli District.

... Respondent/Petitioner

For Petitioner : Mr.Haja Mohideen.A, Advocate

For Respondent : Mr.C.Suresh Kannan, Advocate



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ORDER

This petition has been filed by the petitioner/respondent to permit him to withdraw Rs.2,95,720/- (Rupees Two lakhs ninety five thousand seven hundred and twenty only) deposited by the respondent/petitioner in S.T.C.No.137 of 2018 on the file of the learned Judicial Magistrate, Thiruvaiyaru.

2. The learned counsel for the petitioner submitted that the respondent/petitioner was found guilty U/s.138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year and also directed the respondent/petitioner to pay Rs.7,39,300/- (Rupees Seven lakhs thirty nine thousand three hundred only) to the petitioner/respondent/complainant towards compensation, in default, to undergo simple imprisonment for a period of 3 months, by judgment dated 21.03.2023 passed in S.T.C.No.137 of 2018 on the file of the learned Judicial Magistrate, Thiruvaiyaru. Challenging the judgment, the respondent/petitioner preferred the appeal in CrI.A.No.113 of 2023 before the I Additional District and Sessions Court (PCR), Thanjavur and the appeal was dismissed on 27.08.2024. Pending proceedings, the respondent/petitioner deposited Rs.1,47,860/- (Rupees One lakh forty seven thousand eight hundred and sixty only) to the credit of S.T.C.No.137 of 2018 on the file of the learned Judicial Magistrate,



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Thiruvaiyauru. Thereafter, the respondent/petitioner has filed the main CrI.R.C(MD) No.1048 of 2024 along with CrI.M.P(MD)No.11529 of 2024 before this Court. This Court while suspending sentence in CrI.M.P(MD)No.11529 of 2024 on 28.10.2024, directed the respondent/petitioner to deposit 50% of the balance amount i.e., Rs.2,95,720/- (Rupees Two lakhs ninety five thousand seven hundred and twenty only) to the credit of S.T.C.No.137 of 2018 on the file of the learned Judicial Magistrate, Thiruvaiyauru and accordingly, the respondent/petitioner deposited. Now, there is Rs.4,43,580/- (Rupees Four lakhs forty three thousand five hundred and eighty only) in the credit of S.T.C.No.137 of 2018 on the file of the learned Judicial Magistrate, Thiruvaiyauru. The petitioner/respondent is aged 70 years and the cheque amount is being business transaction amount between the parties and he is conducting the case for the past 7 years. Further, he submitted that there is concurrent finding by the trial Court as well as the Appellate Court, so he may be permitted to withdraw the amount of Rs.2,95,720/- (Rupees Two lakhs ninety five thousand seven hundred and twenty only) under deposit.

3. The learned counsel for the respondent/petitioner raised an objection that he has made several grounds challenging the findings of the courts below and the transaction was made by the respondent/petitioner through one Inbaraj, but the



petitioner/respondent has not taken any action against Inbaraj and so, the petitioner
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may not be permitted to withdraw the amount.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

5. The submissions of both sides counsels have been carefully considered. It is admitted that the respondent/petitioner was found guilty U/s.138 of the Negotiable Instruments Act and he was directed to pay the compensation of cheque amount by the trial Court and the appeal preferred by him was also dismissed by the Appellate Court. Now, the respondent/petitioner has moved this Court with CrI.R.C(MD) No.1048 of 2024 and the same is pending. It is also admitted that the respondent/petitioner deposited a total sum of Rs.4,43,580/- (Rupees Four lakhs forty three thousand five hundred and eighty only) to the credit of S.T.C.No.137 of 2018 on the file of the Judicial Magistrate, Thiruvaiyauru as directed by the Court while suspending the sentence. However, the petitioner/respondent seeks for withdrawal of Rs.2,95,720/- (Rupees Two lakhs ninety five thousand seven hundred and twenty only) from the deposited amount.



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6. For better appreciation it is better to quote the relevant Section 148 of the Negotiable Instruments Act, which reads as follows:

"148: Power of Appellate Court to order payment pending appeal against conviction:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court:

PROVIDED that the amount payable under this subsection shall be in addition to any interim compensation paid by the appellant under Section 143A.

(2) The amount referred to in sub section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.



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(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

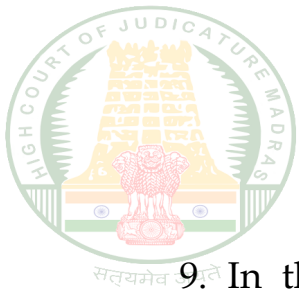
PROVIDED that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

7. On plain reading of Section 148 of the Negotiable Instruments Act, it is very clear that the appellate Court may order the accused to deposit a minimum of 20% of the fine amount or the compensation awarded by the trial Court and if the said amount is deposited within 60 days from such order, the said Court may direct to release the amount in deposit made by the accused to the complainant during the pendency of the appeal, and while releasing such amount, the complainant must be directed to repay the said amount in the event of acquittal of the accused with interest at the bank rate which was prevailing during the said period.



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8. It is settled proposition that as per the Act, the "appellate Court", which also includes this Court and which is exercising all the powers as enumerated under Section 401 of Cr.P.C. This Court while considering the revision, can also exercise the power under Section 386 of Cr.P.C. and other incidental provisions. For speedy disposal of the cheque bounce cases, the Act has been amended from time to time by the Central Government as there are delaying tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining the stay and in order to avoid injustice caused to the complainant. Already there is a concurrent finding of both Courts and there is a deposit of 50% of the cheque amount. The petitioner is aged 70 years and has been agitating for his cheque amount for the past 7 years. The petitioner wants to withdraw Rs.2,95,720/- deposited by the respondent/petitioner as per order of this Court. I am of the considered view that when the enactment has been made as a beneficial legislation, to protect the interest of the complainant and provide relief and to avoid and discourage frivolous appeals and litigations, the petitioner may be permitted to withdraw the deposit amount and therefore, I am inclined to allow this petition on conditions.



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9. In the result, this petition is allowed and the petitioner is permitted to withdraw Rs.2,95,720/- (Rupees Two lakhs ninety five thousand seven hundred and twenty only) deposited by the respondent to the credit of S.T.C.No.137 of 2018 on the file of the learned Judicial Magistrate, Thiruvaiyaru on the following conditions:

(i) The petitioner/complainant has to execute a bond for a sum of Rs.2,95,720/- (Rupees Two lakhs ninety five thousand seven hundred and twenty only) with one surety for the like sum to the satisfaction of the Judicial Magistrate Court, Thiruvaiyaru;

(ii) The petitioner/complainant shall file an undertaking affidavit that if the respondent/accused is acquitted in this case, the petitioner/complainant has to repay the said amount with interest at the bank rate as on the date of release.

Sd/-
18/02/2025

/ TRUE COPY /

/02/2025
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

vsd



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TO

- 1 THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE(PCR),
THANJAVUR, THANJAVUR DISTRICT.
- 2 THE JUDICIAL MAGISTRATE,
THIRUVAIYARU
- 3 DO-THROUGH-THE CHIEF JUDICIAL MAGISTRATE
THANJAVUR DISTRICT AT KUMBAKONAM.

+1 CC to M/s.C.SURESH KANNAN, Advocate (SR-1779[I] dated 18/02/2025)

+1 CC to M/s.A.HAJAMOHIDEEN, Advocate (SR-1789[I] dated 18/02/2025)

ORDER IN
CRL MP(MD) NO. 14357 of 2024 IN
CRL RC(MD) NO. 1048 OF 2024
Date :18/02/2025

ES/VR/SAR /28.02.2025/9P/6C

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