

Bail Slip

The Appellants/Petitioners/accused namely R.Babuchelladurai S/o. Rajamanickam was directed to be released on bail as per the order of this court dt.04/03/2008 in M.P.1/2008 in CrI.R.C.No.313/2008 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.6.2015

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

CrI.R.C.No.313 of 2008

R.Babuchelladurai : Petitioner/Accused

versus

Mohanakrishnan : Respondent /Complainant

Criminal Revision filed against the judgment in C.A.No.215 of 2007 on the file of the Additional Sessions cum F.T.C. No.1, Erode, dated 22.1.2008 and confirming Judgment in C.C.No.491/2006 on the file of Judicial Magistrate No.III, Erode. Dt: 18/07/2007.

For petitioner : Mr.E.Balakrishnan

O R D E R

The petitioner has come forward with this criminal revision against the judgment of the Additional Sessions cum F.T.C. No.1, Erode, whereby the petitioner was convicted for offence under Section 138 Negotiable Instruments Act and sentenced to undergo six months simple imprisonment and to pay a fine of Rs.3000/-, in default to undergo two months simple imprisonment.

2. Though the respondent has been served there is no representation for the respondent. As per the judgment of the apex Court reported in 2013 (3) SCC 721, K.S.Panduranga vs. State of Karnataka, if the party did not appear there is no necessity for the Court to issue warrant or special notice or appoint an amicus curie to argue the case on his behalf and the Court is empowered to deal with the matter on merits and dispose of the same.

3. The learned counsel for the petitioner submitted that the petitioner filed an application before the lower Court for production

of documents and that application was dismissed, and on the very next day, judgment was pronounced by the said Court. The petitioner has not been given relief to go on appeal or revision against the order rejecting application for production of documents. When such an opportunity was not given, dismissal of the main case is against the principles of law. In this connection, he would rely on an unreported judgment of this Court in CrI.R.C.No.271/2008 dated 7.4.2015 (S.Sathyamoorthy vs. S.R.Kumarashanmugham). He would also contend that application filed under Section 391 Cr.P.C. before the Appellate Court was also dismissed when the judgment was passed. Therefore, before both Courts, he was not given opportunity. Therefore, the order passed by the Appellate Court is also wrong.

4. On a careful reading of the judgment, the records available and the grounds raised by the petitioner, the revision is not maintainable for the simple reason that the Courts below have categorically pointed out that the petitioner did not even reply to the statutory notice. Secondly, the matter was kept pending for a long time. They have given a clear finding that the petitioner was the cause of delay. In fact, the case was pending from 5.12.2005 to 28.5.2006, before the Judicial Magistrate No.1, Erode, and thereafter it was transferred to Judicial Magistrate No.3, Erode, it was pending from 3.1.2007 to 13.7.2007. During those period, he did not take any steps to produce the documents. Further, the lower Court has also given a finding that the petitioner was living only in the address mentioned and in that address only the cheque was transacted and it is also said that the documents which is sought to be produced are not in any way connected to the case. Further, all the documents which has been produced are only xerox copies. Therefore, the Appellate Court also gave a detailed finding and dismissed the application under Section 315 Cr.P.C. When there is a clear case of delay on the part of the accused he cannot later on contend that he was not given adequate opportunity.

5. In fact, in the case decided by this Court that was a summons case. It was served on the accused only on 27.9.2007. P.W.1 was examined and cross examined on 8.2.2008. But the case was posted for defence witness on 19.2.008. On that date, the petitioner sought for adjournment to examine his witness. But even one opportunity was not given to cross examine the witness on the defence side. On the same day, another application was filed to mark the document, which was denied. Therefore, this Court has clearly held that there was no delay and immediate steps was taken on the next hearing date. That is not the case here. In this case, there is a long delay of more than two years. The petitioner has slept over the matter for two years and therefore, he cannot complain later that no opportunity was not given to him. At this juncture, the learned counsel for the petitioner would submit that some leniency maybe shown to the petitioner. He submits that the instead of imprisonment, the petitioner could be directed to pay the amount.

6. The respondent is not present. The respondent would be more interested in getting back his money rather than sending the petitioner to prison. Therefore, instead of six months imprisonment, the sentence is modified to payment of compensation, and that too of cheque amount, within a period of three months. In case of failure to pay the cheque amount within a period of three months, the original sentence of six months awarded by the Courts below would be restored.

7. The criminal revision is disposed of accordingly.

Sd/-
Asst.Registrar (CO)

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Sub Asst. Registrar

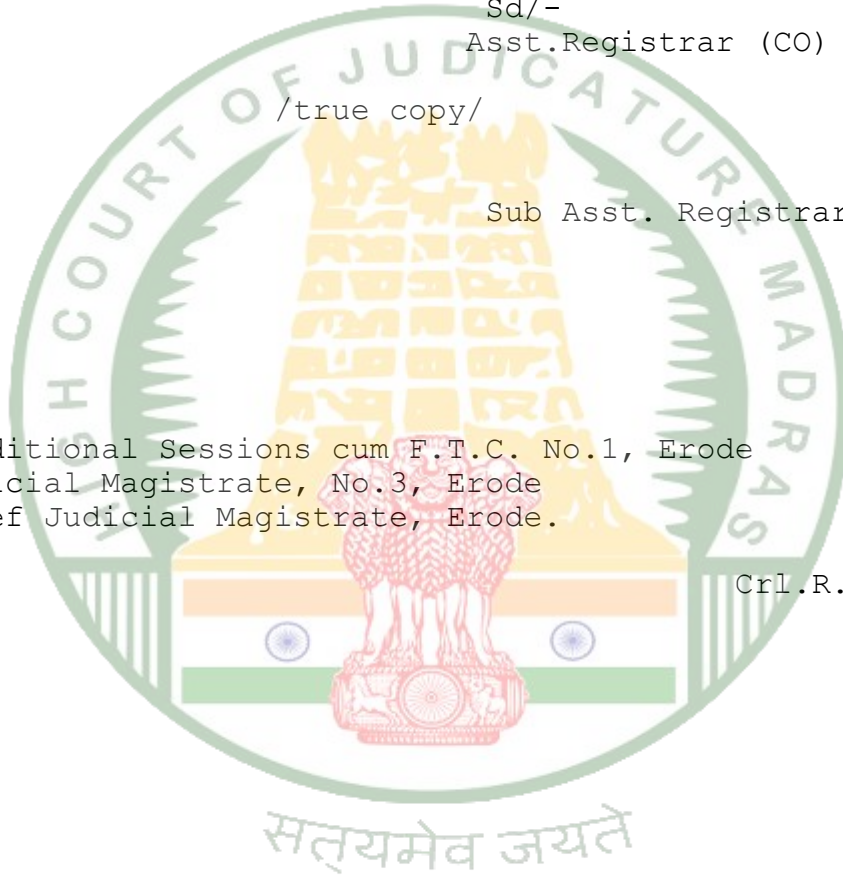
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To

- 1.The Additional Sessions cum F.T.C. No.1, Erode
- 2.The Judicial Magistrate, No.3, Erode
- 3.The Chief Judicial Magistrate, Erode.

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CrL.R.C.No.313 of 2008



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