



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2015

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**THE HONOURABLE MR.JUSTICE M.VENUGOPAL**

Crl.R.C.(MD)No.134 of 2015

D.Periyasamy ... Petitioner/Complainant

Vs.

I.Ramakrishnan ... Respondent/ Accused

Prayer: Criminal Revision Petition is filed under Sections 397 r/w. 401 of Cr.P.C., to set aside the order of the Learned Judicial Magistrate/Fast Track Court(Magisterial Level), Thoothukudi passed under Section 204(4) of Cr.P.C on 05.12.2014 in C.C.No.98 of 2012 and restore the same for fresh disposal on merits.

For Petitioner : Mr.Antony S.Prabhakar  
For Respondent : Mr.N.Subramanian for  
M/s.A.Thiruvadikumar

O R D E R

The Petitioner/Complainant has preferred the instant Criminal Revision Petition before this Court praying for passing of an order by this Court to set aside the order of the Learned Judicial Magistrate(Magisterial Level), Thoothukudi, passed under Section 204(4) of Cr.P.C on 05.12.2014 in C.C.No.98 of 2012.

2. The Learned Judicial Magistrate/Fast Track Court (Magisterial Level), Thoothukudi, while passing the impugned order on 05.12.2014 in C.C.No.98 of 2012 had observed and held as under:

"In view of the Megal Lok Adalat, this case is suo-motu taken as advance today. This case is pending for more than one year time and there is no representation made on behalf of the complainant regarding the process fee for the execution of the warrant. In this regard, this Court already issued a notice to the Bar Association, Tuticorin and a general notice is affixed by this Court in the notice book of this Court. In this case, there is no process fees is paid by the complainant for the execution of the warrant against the Accused, for



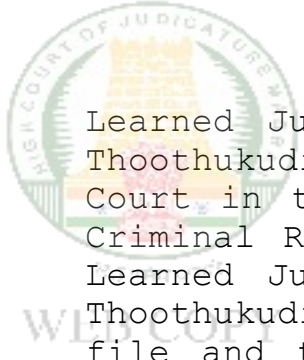
which this case is pending for more than one year without the process fee paid by the complainant. As the process fee has not paid by the complainant even after the lapse of one year, this case is dismissed under Section 204(4) of Cr.P.C., and the accused is discharged from the charges against him U/S.138 of Negotiable Instruments Act."

3. According to the Learned Counsel for the Petitioner/Complainant, the Petitioner/Complainant in fact had paid the process fee for execution of bailable warrant against the Respondent/Accused in C.C.No.98 of 2012 on 07.08.2013 through memo and that the same was ordered to be issued by the Learned Judicial Magistrate on 12.08.2013. But, that was not taken into account/borne in mind by the trial Court at the time of passing the impugned order, as a result of which, there has occasioned a serious miscarriage of justice. At this juncture, this Court has called for the entire records from the file of the Learned Judicial Magistrate/Fast Track Court(Magisterial Level), Thoothukudi in C.C.No.98 of 2012, is of the considered view that the Revision Petitioner/Complainant in fact had paid the process fee of Rs.5/- in regard to issuance of bailable warrant on 07.08.2013 and the trial Court had passed orders for issuance of the same on 12.08.2013. Unfortunately, the trial Court had not taken note of this primordial fact and has passed the impugned order on 05.12.2014 inter alia stating that the process fee was not paid by the Complainant even after a lapse of one year and dismissed the case under Section 204 of Cr.P.C. Resultantly, it discharged the Respondent/Accused from the charge against him under Section 138 of Negotiable Instruments Act.

4. In view of the fact that the Learned Judicial Magistrate/Fast Track Court(Magisterial Level), Thoothukudi, had erroneously passed an order of dismissal of the case in C.C.No.98 of 2012 on 05.12.2014 by stating that the process fee was not paid by the Complainant even after a lapse of one year etc., which is an incorrect one because of the reason that in reality, the Revision Petitioner/Complainant had paid the process fee on 07.08.2013 and the same was ordered to be issued by the trial Court on 12.08.2013, this Court is left with no option but to interfere with the said order of dismissal passed by the trial Court and to prevent an aberration of justice and to promote substantial cause of justice, sets aside the order, dated 05.12.2014 passed in C.C.No.98 of 2012 by the Learned Judicial Magistrate/Fast Track Court(Magisterial Level), Thoothukudi. Consequently, this Criminal Revision Case succeeds for the simple reason that for the mistake committed by a Court of Law, no litigant should be penalized or sought to suffer.

<https://hcservices.ecourts.gov.in/hcservices/>

5. In fine, this Criminal Revision Case is allowed and the impugned order, dated 05.12.2015 passed in C.C.No.98 of 2012 by the



Learned Judicial Magistrate/Fast Track Court(Magisterial Level),  
Thoothukudi, is hereby set aside for the reasons assigned by this  
Court in this Revision. Consequent to the allowing of present  
Criminal Revision Petition by this court, this Court directs the  
Learned Judicial Magistrate/Fast Track Court(Magisterial Level),  
Thoothukudi Thoothukudi, to restore the C.C.No.98 of 2012 on its  
file and to proceed further in the manner known to law and in  
accordance with Law.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

pm

To  
The Judicial Magistrate/Fast Track Court  
(Magisterial Level),  
Thoothukudi.

+1CC to Mr.Antony.S.Prabahar Advocate Sr.No.75732  
+1CC to Mr.A.Thiruvadi Kumar Advocate Sr.No.75825

GJM/NGm/SS/5.1.16-3P-4C

Cr1.R.C. (MD) No.134 of 2015  
21.12.2015