

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26..09..2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Criminal Original Petition No.21831 of 2016

and

Crl.M.P.Nos.10114 and 10115 of 2016

Mr.R.P.Deivasigamani

... Petitioner

-Versus-

M/s.Shriram Transport Finance Co. Ltd.,
Rep. by its Power of Attorney Mr.T.Kannan,
No.8, Parinagar,
Neela Complex, 1st Floor,
Perundurai Road,
Erode District 638 011.

... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the entire records relating to the case in Crl.R.C.No.16 of 2016 on the file of the II Additional Sessions Judge, Erode, and set aside the order dated 28.07.2016 passed by the learned II Additional Sessions Judge, Erode, upholding the order dated 09.02.2016 made in Crl.M.P.No.929 of 2016 in S.T.C.No.61 of 2014 by the learned Judicial Magistrate-cum-Fast Track Court No.I, Erode.

For Petitioner

: Mr.P.P.Shanmugasundaram

ORDER

This criminal original petition has been filed challenging the order dated 28.07.2016 made in Crl.R.C.No.16 of 2016 by the learned II Additional Sessions Judge, Erode, and set aside the order dated 28.7.2016 upholding the order dated 09.02.2016 made in Crl.M.P.No.929 of 2016 in S.T.C.No.61 of 2014 by the Judicial Magistrate-cum-Fast Track Court No.I, Erode, order dated 9/2/16 and to set asided and quash the same.

2. For the sake of convenience, the parties in this matter will be referred to as complainant and accused.

3. The complainant lodged a complaint against the accused for offence under Section 138 of the Negotiable Instruments Act, which is now pending as S.T.C.No.61 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court No.I, Erode. The complainant was examined as P.W.1 and the accused did not choose to cross examine him. The accused was examined under Section 313 of Cr.P.C. and thereafter, the accused filed Crl.M.P.No.929 of 2016 in S.T.C.No.61 of 2014 for recalling P.W.1 which was allowed by the trial court on condition that the accused should pay a sum of Rs.1,000/- as cost to the complainant on or before 11.02.2016. The accused did not comply with the conditional order passed by the trial court and therefore, the petition was dismissed. Aggrieved by the said order, the accused preferred a revision in Crl.R.C.No.16 of 2016 under Section 397 of Cr.P.C. and the case was posted before the II Additional Sessions Judge, Erode. Before the Additional Sessions Court the accused did not appear after having filed the revision petition. Therefore, the learned Additional Sessions Judge, called for the records, examined the same and upheld the order of the learned Magistrate. Challenging which the accused is before this court under Section 482 of Cr.P.C.

4. The learned counsel for the accused submitted that one fair opportunity should be afforded to the accused to cross examine P.W.1.

5. It is seen that the complaint in this case was filed in the year 2013 and after P.W.1 was examined in chief the accused did not choose to cross examine P.W.1 for reasons best known to him. On the petition filed by the accused under Section 311 of Cr.P.C., the trial court allowed the petition and directed the accused to pay a sum of Rs.1,000/- as cost to the complainant before the stipulated time which the accused did not pay. The High Court and the Sessions Court have concurrent jurisdiction under Section 397 of Cr.P.C. The accused filed Criminal Revision Petition before the Sessions Court and kept the trial proceedings in abeyance. Even after filing the revision petition, he did not choose to appear before the revisional court which necessitated the II Additional Sessions Judge to call for the records, examine the records and dismiss the case of the accused. Once a party has elected to approach the Sessions Court under Section 397 of Cr.P.C. he is precluded from filing the second revision before this court. However, a petition under Section 482 of Cr.P.C. is maintainable where it is shown that the courts below have committed serious illegality resulting in grave prejudice to a person. In this case, it was of the petitioner's own making in not respecting the court orders for which he is to blame himself. This is not a case where the two courts have committed any serious illegality warranting interference by this court under Section 482 of Cr.P.C.

6. In the result, the criminal original petition devoid of merits is accordingly dismissed. Consequently, connected MPs are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

kmk

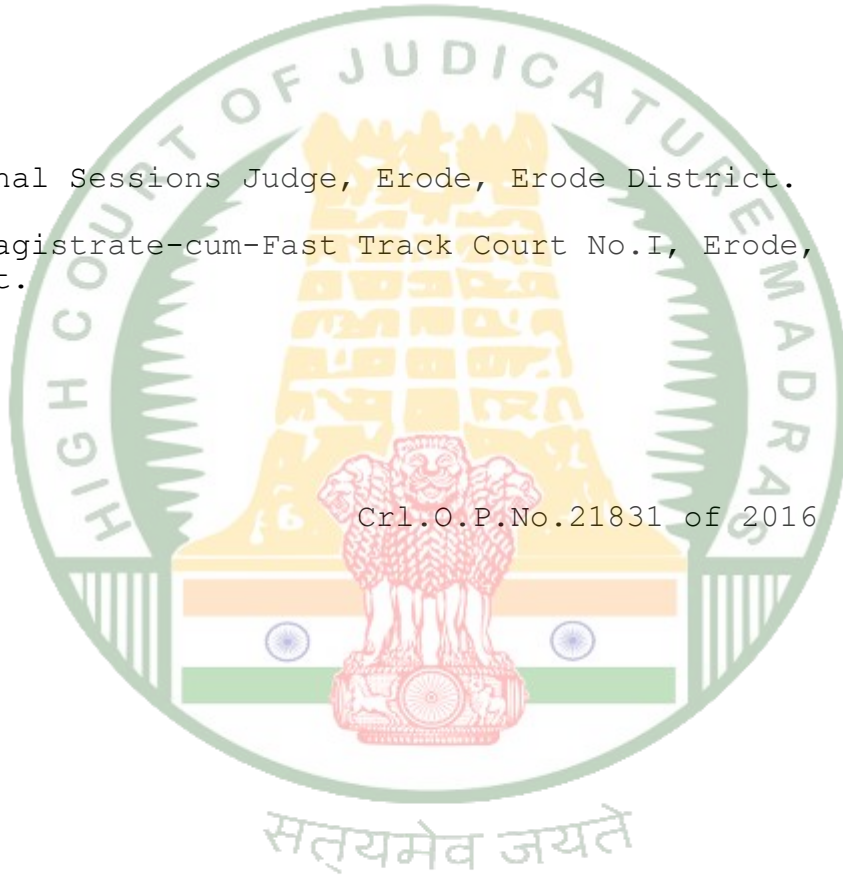
To

1.The II Additional Sessions Judge, Erode, Erode District.

2.The Judicial Magistrate-cum-Fast Track Court No.I, Erode,
Erode District.

CO-NMI

ths : 22.10.2016



CrI.O.P.No.21831 of 2016

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