

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. Nos.9782 of 2016 and Crl.M.P. No.5092 of 2016  
Crl.O.P. No.9948 of 2016 and Crl.M.P. No.5269 of 2016  
Crl.O.P. No.9949 of 2016 and Crl.M.P. No.5272 of 2016

D. Sadeesh Kumar                      Petitioner in all 3 petitions/  
Accused/Petitioner

VS.

|            |                                                          |
|------------|----------------------------------------------------------|
| G.K. Seenu | Respondent in all 3 petitions/<br>Complainant/Respondent |
|------------|----------------------------------------------------------|

Prayer in Crl.O.P. No.9782 of 2016:

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order passed by the Judicial Magistrate, F.T.C., Vellore in C.M.P. No.551 of 2016 in C.C. No.187 of 2013 dated 29.03.2016.

Prayer in CrI.O.P. No.9948 of 2016:

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order passed by the Judicial Magistrate, F.T.C., Vellore in C.M.P. No.553 of 2016 in C.C. No.185 of 2013 dated 29.03.2016.

Prayer in CrI.O.P. No.9949 of 2016:

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order passed by the Judicial Magistrate, F.T.C., Vellore in C.M.P. No.552 of 2016 in C.C. No.186 of 2013 dated 29.03.2016.

For petitioner                      Mr. S. Sairaman

## COMMON ORDER

These Criminal Original Petition Nos.9782, 9948 and 9949 of 2016 are filed to set aside the order passed by the Judicial Magistrate (FTC) in C.M.P. Nos.551/2016, 553/2016 and 552/2016 in C.C. Nos.187/2013, 185/2013 and 186/2013 respectively.

2      Heard the learned counsel for the petitioner and  
perused the records.

3 It is seen that the petitioner is facing prosecution in C.C. Nos.187, 185 and 186 of 2013 for offences under Section 138 of the Negotiable Instruments Act, 1881. The prosecution was launched in 2013 and P.W.1 was examined in chief on 25.02.2015. At the request of the learned counsel for the accused, cross examination of P.W.1 was deferred by the Court. On 24.04.2015, the accused has made an endorsement that he is not cross examining the witness. Thereafter, at the request of the accused, P.W.1 was recalled and he was cross examined by the accused on 02.12.2015. On 02.12.2015, at the request of the learned counsel for the accused, further cross examination was deferred. Again, the witness was called on 28.01.2016 and was extensively cross examined by the accused. Thereafter, the accused has filed the present petitions under Section 311, Crl.P.C. to recall P.W.1 on the ground that he has not had sufficient opportunity to cross examine him. Even in the petitions filed under Section 311 Cr.P.C., the accused has not made out sufficient ground for recalling P.W.1. The Trial Court dismissed the petitions by order dated 29.03.2016, challenging which, the accused is before this Court.

4 Mr. Sairaman, learned counsel for the accused would submit that if one opportunity is given to the accused to cross examine P.W.1, it will serve the interest of justice. He also placed reliance on a judgment dated 20.04.2016 of this Court in Crl.O.P. (MD) No.601 of 2016 in support of his contention.

5 It is true that in the above said judgment, this Court had recalled the witness for the purpose of cross examination. A reading of the said order makes it clear that this Court recorded that the witness was not cross examined by the accused at all and hence, this Court felt that an opportunity should be given to the accused to cross examine the witness. This Court called for photocopies of deposition from the Trial Court and found that this petitioner has exhaustively cross examined P.W.1.

6 Under such circumstances, this is not a case, where, the petitioner was not given opportunity to cross examine P.W.1. In fact, on 24.04.2015, the Trial Court has made a specific endorsement that the accused has not cross examined witness, despite which, P.W.1 was recalled on 02.12.2015 and 28.01.2016. Hence, this is not a case, where, the accused was not given sufficient opportunity to cross examine P.W.1. A trial should be completed within a period of six months, as mandated under Section 143(3) of the Negotiable Instruments Act and when the trial is not completed within the mandated period, the very purpose of the enactment gets defeated.

In the result, this Court does not find any serious infirmity in the orders passed by the Court below and these Criminal Original Petitions are accordingly dismissed. Connected Crl.M.Ps. are closed.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

cad

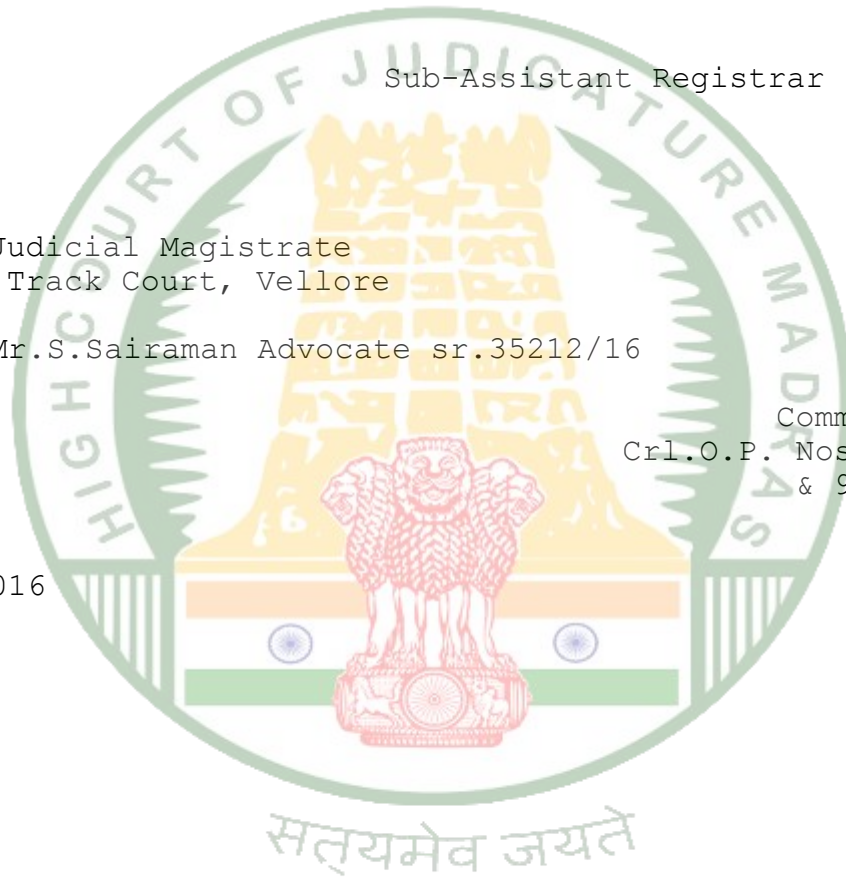
To

1 The Judicial Magistrate  
Fast Track Court, Vellore

+1 cc to Mr.S.Sairaman Advocate sr.35212/16

Common order in  
Crl.O.P. Nos.9782, 9948  
& 9949 of 2016

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