

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2018

CORAM

THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

CRL.O.P.No.29029 of 2013

and

M.P.No.1 of 2013

M/s.Sri Sakthi Wealth Management,
by its Proprietor D.Sankar,
27, Varagappa Street,
Karungalpalayam, Erode-3. .. Petitioner

Vs

G.Karthikeyan .. Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records relating to the Docket order dated 19.09.2013 made in STC.No.505 of 2013 on the file of the Judicial Magistrate/Fast Track Court No.II, Erode and set aside the same by allowing this Criminal Original Petition.

For Petitioner : Mr.N.Manokaran
For Respondent : Mr.M.Guruprasad

O R D E R

The petitioner is the complainant in STC.No.505/2012 on the file of Judicial Magistrate/Fast Track Court No.II, Erode. He filed a complaint against the respondent herein for an alleged offence punishable under Section 138 of Negotiable Instruments Act.

2. The learned Judicial Magistrate/Fast Track Court No.II, Erode, took cognizance of the offence under Section 138 of Negotiable Instruments Act and issued summons to the accused. Thereafter, the case was posted for trial on 26.08.2013 and P.W.1 was examined on 04.04.2013. Subsequently, the case was posted for cross examination of P.W.1 on two occasions. Since P.W.1 refused to get into the witness box the learned Judicial Magistrate/Fast Track Court No.II, Erode, closed the evidence of P.W.1 and posted the case for further proceedings on 04.10.2013.

3. Aggrieved over the said order passed by the learned Judicial Magistrate/Fast Track Court No.II, Erode, dated 19.09.2013, the petitioner/complainant has filed the present petition to set aside the order.

4. Mr.N.Manokaran, the learned counsel appearing for the petitioner/complainant would contend that when a counsel filed change of Vakalat for the complainant and also filed a petition under Section 311 Cr.P.C, the Magistrate should not have closed the evidence of P.W.1.

5. The learned Judicial Magistrate/Fast Track Court No.II, Erode in his order dated 19.09.2013 has observed that,

" Both parties present. Petition under Section 309 Cr.P.C filed on behalf of the complainant is dismissed. P.W.1 has refused to depose today since he wants to prefer a petition Under Section 311 Cr.P.c the same was recorded in evidence. Mr.Rathanavel, Advocate filed change of Vakalat for complainant petition under Section 311 Cr.P.C filed on behalf of complainant. The evidence of P.W.1 was dispensed since he refused to depose. For further proceedings call on 04.10.2013."

6. It is not clear from the orders passed by the learned Judicial Magistrate/Fast Track Court No.II, Erode, whether the entire evidence of P.W.1 was eschewed or the evidence of P.W.1 was closed. In any event, since, P.W.1 has not been cross-examined by the accused, this Court is of the view that the accused/respondent should be given an opportunity to cross examine P.W.1 and the complainant should also be permitted to prove his contentions.

7. The learned counsel appearing for the respondent also fairly conceded that the orders dated 19.09.2013 passed by the learned Judicial Magistrate/Fast Track Court No.II, Erode in STC.No505/2012 is liable to be set aside.

8. In the facts and circumstances, the petition is allowed and the order dated 19.09.2013 passed by the learned Judicial Magistrate/Fast Track Court No.II, Erode is set aside. Consequently, connected Miscellaneous Petition is closed.

9. The learned Judicial Magistrate/Fast Track Court No.II, Erode is directed to dispose the case within a period of six months from the date of receipt of copy a of this order.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The learned Judicial Magistrate/
Fast Track Court No.II,
Erode.

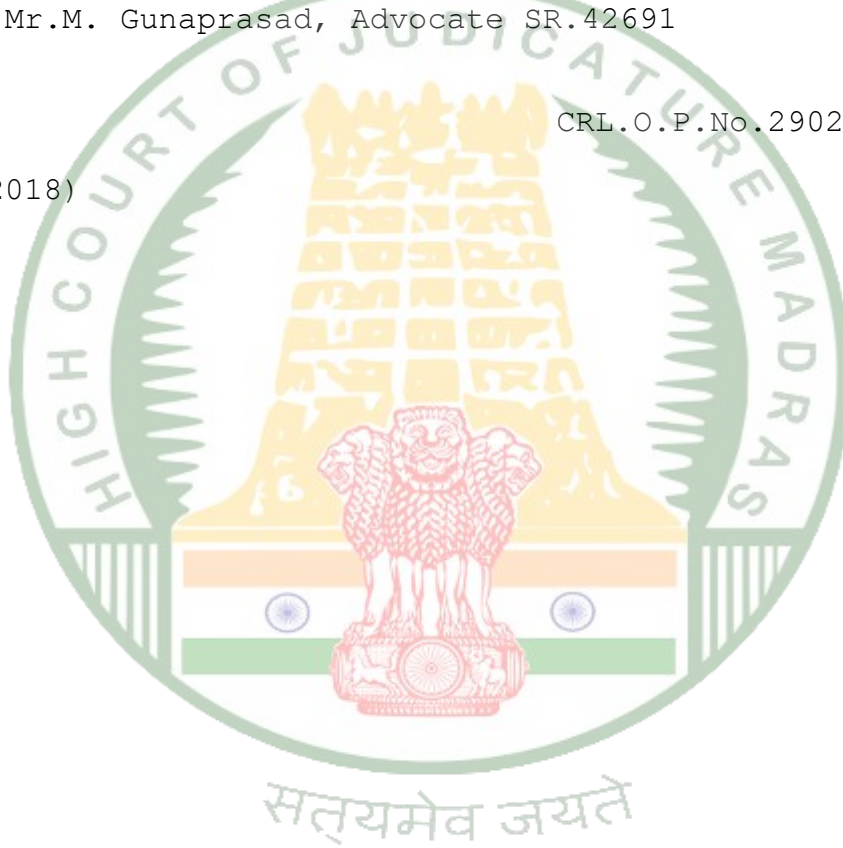
2. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.M. Manokaran, Advocate Sr.42468

+ 1 cc to Mr.M. Gunaprasad, Advocate SR.42691

CRL.O.P.No.29029 of 2013

KS(CO)
EU(27/07/2018)



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