

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2018

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.Nos.29637 and 29640 of 2018

Aruchamy@Chinu

....Petitioner/Petitioner/Accused
in both the cases

Vs.

R.Palanisamy

...respondent/respondent/Complainant
in both the cases

PRAYER in Crl.O.P.No.29637 of 2018 : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set-aside the order of dismissal for non-payment of cost of Rs.25,000/- made in C.M.P.No.1648/18 in C.C.No.441 of 2016 vide order dated 13.08.2018 on the file of District and Sessions Judge, Coimbatore, Coimbatore District.

PRAYER in Crl.O.P.No.29640 of 2018 : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to modify the condition of deposit of Rs.25,000/- made in C.M.P.No.1648/18 in C.C.No.441 of 2016 vide order dated 11.07.2018 on the file of District and Sessions Judge, Coimbatore, Coimbatore District.

For Petitioner : M/S.M.Sathish Kumar
in both the cases

O R D E R

This petition has been filed challenging the order passed by this Court below dismissing the condone delay petition filed by the petitioner, on the ground that this petitioner did not comply with the condition imposed by the Court below.

2.The respondent filed a complaint against this petitioner under Section 138 of Negotiable Instruments Act. The Judicial Magistrate, Fast Track Court-I, Coimbatore by judgment dated 01.11.2017 convicted the petitioner for the said offence and imposed a sentence of 6 months simple imprisonment and

compensation of Rs.7,80,000/- within 2 months and in default to undergo 2 months simple imprisonment.

3.The petitioner aggrieved by the said judgment, filed an appeal before the Principal District and Sessions Court, Coimbatore, with a delay of 130 days. The Sessions Court, on considering the reasons assigned by the petitioner and after hearing the respondent, allowed the petition by an order dated 11.07.2018, by imposing the condition that the petitioner has to deposit a sum of Rs.25,000/- within 30 days, on or before 13.08.2018. This order was not complied by the petitioner and therefore, the petition was dismissed on 13.08.2018. Aggrieved by the same, the present petition has been filed before this Court.

4.The learned counsel for the petitioner would submit that the petitioner was remanded to judicial custody on 07.12.2018, pursuant to Non-Bailable-Warrant issued by the Trial Court. The learned counsel further submitted that the petitioner does not have any financial support and therefore the petitioner was not in a position to deposit a sum of Rs.25,000/- as directed by the Sessions Court. The learned counsel also submitted that in view of the fact that the petitioner has already been arrested and is in judicial custody, the request of the petitioner to modify the cost imposed by the Court below, may be considered by this Court.

5.It is seen from the records that the total cheque amount in this case a sum of Rs.7,80,000/-. The Trial Court, after considering the entire case had convicted the petitioner and imposed the sentence of 6 months simple imprisonment and directed the petitioner to pay the cheque amount as compensation. The petitioner without complying with the same and without approaching the Appellate Court on time, filed an appeal belatedly with a delay of 130 days. The Court below also leniently considered the petition filed by the petitioner and allowed the petition by imposing the condition that the petitioner must deposit a sum of Rs.25,000/- within 30 days. This was not complied with by the petitioner and as a result of the same, the petition came to be dismissed. This Court does not find any illegality or infirmity in the order passed by the Court below.

6.However, in order to give one last chance to the petitioner and to give him an opportunity to work out his remedy by filing a statutory appeal, this Court deems it fit to interfere with the order passed by the Sessions Court. This is more so due to the fact that the petitioner has already been arrested and remanded to judicial custody on 07.12.2018.

7.The order passed by the District and Sessions Court, Coimbatore, in C.M.P.No.1648 of 2018, dated 13.08.2018 is hereby set-aside. The petitioner is directed to deposit a sum of Rs.10,000/- before the Trial Court as early as possible. Thereafter, the petitioner shall file a memo before the Court below along with the proof of deposit of Rs.10,000/- and the Court below shall condone the delay in filing the appeal and shall entertain the appeal filed by the petitioner. The petitioner shall work out his further remedies before the District and Sessions Court, Coimbatore in accordance with law.

8.This Criminal Original Petition is accordingly allowed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

rpl/gsp

To

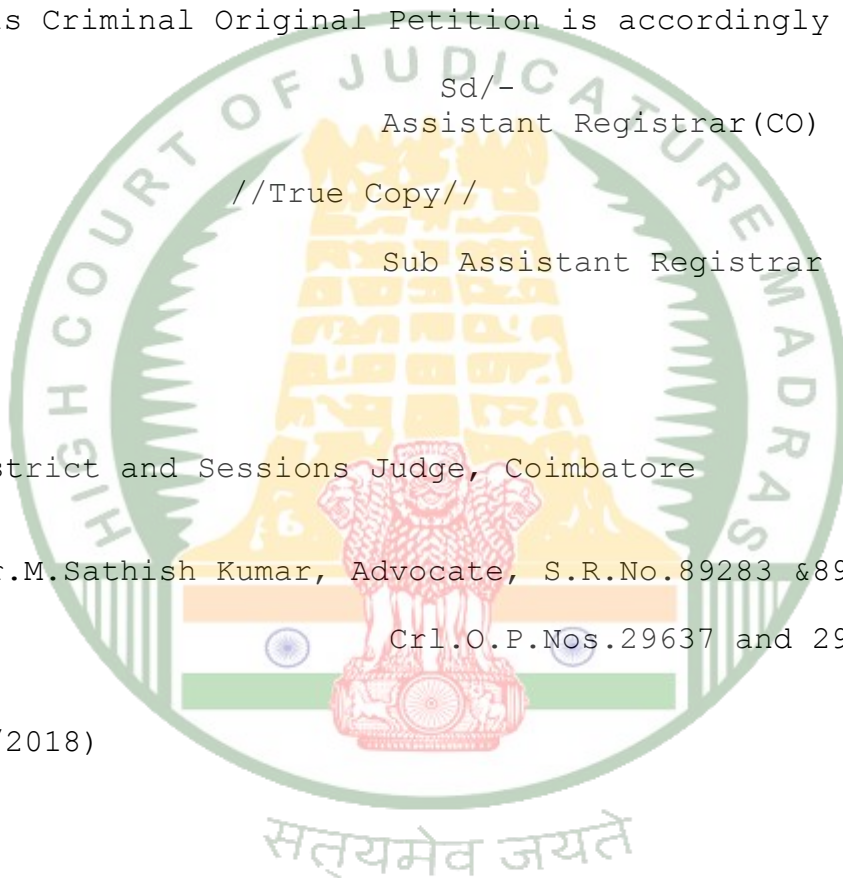
1. The District and Sessions Judge, Coimbatore

+2cc to Mr.M.Sathish Kumar, Advocate, S.R.No.89283 &89284

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VD(CO)

GSP(21/12/2018)



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