



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CrI.O.P.(MD).Nos.9000 & 9001 of 2018
and
C.R.L.M.P.(MD).Nos.3936 & 3938 of 2018

Thankadhas ...Petitioner in both petitions
Vs.

P.Satheesh Kumar ...Respondent in both Petitions

COMMON PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to set aside the order dated 08.05.2018 passed in C.M.P.Nos.1626 of 2018 and 1627 of 2018 in S.T.C.No.80 of 2017 and S.T.C.No.81 of 2017 on the file of the learned Judicial Magistrate No.1, Padmanabhapuram respectively, by allowing the Criminal Original Petitions.

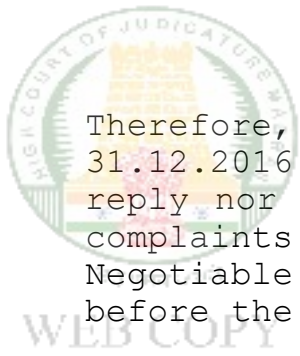
For Petitioner :Mr.Sivakumar
for Mr.R.Murugan
(In both Petitions)

COMMON ORDER

These Petitions have been filed to set aside the orders dated 08.05.2018 passed in C.M.P.Nos.1626 and 1627 of 2018 in S.T.C.Nos.80 and 81 of 2017 on the file of the learned Judicial Magistrate No.1, Padmanabhapuram, respectively.

2.Notice was already served to the respondent and the respondent name was also printed in the cause list.

3.The learned counsel appearing for the petitioner in both the petitions would submit that the petitioner has participated in the chit auction and obtained the prized money of Rs.3,00,000/- (Rupees Three Lakhs only) each, by way of bidding. Subsequently, the petitioner did not pay the installment due. The petitioner is liable to pay a sum of Rs.76,065/- and Rs.1,45,640/- respectively to the respondent. Therefore, the petitioner has given Cheque bearing Nos.533252 and 533251 for a sum of Rs.76,065/- and Rs.1,45,640/- drawn on the South Indian Bank Limited, Thuckalay Branch to the respondent on 21.11.2016 and 28.11.2016 and the same were presented for collection on 01.12.2016. But the same were returned on 05.12.2016 with an endorsement "Funds Insufficient".



Therefore, the respondent issued notices dated 30.12.2016 and 31.12.2016 to the petitioner. The petitioner has neither sent any reply nor paid the said amounts. Therefore, the respondent lodged complaints against the petitioner under Section 138 of the Negotiable Instruments Act in S.T.C.Nos.80 of 2017 and 81 of 2017 before the learned Judicial Magistrate Court No.1, Padmanabhapuram.

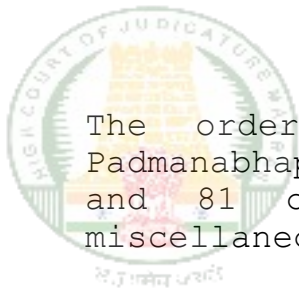
4.The learned counsel appearing for the petitioner would further submit that on 11.01.2018 the respondent has filed a Proof Affidavit and marked the documents as Ex.P.1 to Ex.P.7. Since the petitioner did not appear on that day, an application filed by him under Section 317 Cr.P.C was allowed. He further submitted that the case was posted for cross examination of P.W.1 on 13.02.2018. But there was a local holiday on the said date. Hence, the case was adjourned to 24.02.2018. But on that date, the learned Magistrate was on other duty and the case was posted for 09.03.2018. Subsequently the case was taken on 09.03.2018, the petitioner and the respondent were present, but the counsel for the petitioner was not present. Therefore, the learned Magistrate closed the evidence of P.W.1 and adjourned the case to 05.04.2018 for further evidence of the complainant. On 05.04.2018, the respondent has not produced any further evidence, therefore, the case was adjourned to 16.04.2018. On 16.04.2018, the petitioner has filed petitions in C.M.P.Nos.1626 and 1627 of 2018 in S.T.C.Nos.80 and 81 of 2017 under Section 311 Cr.P.C., before the learned Judicial Magistrate No.I, Padmanabhapuram.

5.The said applications were dismissed by the Trial Court on the ground that the said applications were not filed on the very next hearing date and it was filed only after five adjournments with untenable reasons. Aggrieved by the said orders, these Criminal Original Petitions have been filed.

6.The learned counsel appearing for the petitioner would further submit that the petitioner came to know about some relevant facts and therefore, it is necessary to recall the said witness for cross examination and sufficient reasons have also been stated in the applications to recall the witness. Despite the same, the Court below, without considering the said facts and also without giving any opportunity to the petitioner, has erroneously dismissed the applications and therefore, he prays for interference at the hands of the Court.

7.Considering the facts and circumstances of the case, the reasons stated in the petitions cannot be rejected. Hence, in the interest of justice and also being satisfied with the reasons stated in the Petition, this Court is inclined to grant an opportunity to the petitioner. Therefore, the impugned orders passed by the learned Judicial Magistrate No.I, Padmanabhapuram are liable to be set aside.

8.Accordingly, these Criminal Original Petitions are allowed.



The orders passed by the learned Judicial Magistrate No.I, Padmanabhapuram in Crl.M.P.No.1626 and 1627 of 2018 in S.T.C.Nos.80 and 81 of 2018 are set aside. Consequently, connected miscellaneous petitions are closed.

WEB COPY

/True Copy/

Sd/-

Assistant Registrar (CO)

Sub Assistant Registrar (CS-I)

To

The Judicial Magistrate No.1,
Padmanabhapuram.

+2CC to Mr.R.Murugan Advocate in SR.No.72468,72469.

TSG

DS/RP/SAR-1 :01.08.2018: 3P/4C

Crl.O.P.(MD).Nos.9000 and 9001 of 2018
11.07.2018