

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.23820 of 2012
and M.P.Nos.1 of 2012 & 1 of 2013

R.Rajesh,
S/o.V.Rajasekaran

... Petitioner/Respondent
Vs.

T.Kandasamy,
S/o.Thirunavukkarasu

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to transfer the S.T.C.No.125 of 2011 from the file of the Fast Track Judicial Magistrate at Thiruthuraipoondi to any other competent Court at Tanjore.

For Petitioner : No appearance

For Respondent : No appearance

O R D E R

The petitioner is an accused in S.T.C.No.125 of 2011 filed under Section 138 of the Negotiable Instruments Act by the respondent/complainant, which is pending trial on the file of the Judicial Magistrate Fast Track Court, Thiruthuraipoondi.

2.The contention of the petitioner is that on 07.07.2011, the petitioner had issued a notice to one P.Saraswathi, wife of Mr.C.Palanisamy of Thiruthuraipoondi claiming from her a sum of Rs.3,16,884/- (Rupees three lakh sixteen thousand eight hundred and eighty four only) towards construction work and 10% supervising charge. There was some dispute between the petitioner and the said P.Saraswathi, with regard to the manner in construction of her house. On 21.07.2011, a notice to C.Palanisamy was issued from whom the petitioner had handedover the blank signed cheques and promote as security and borrowed amounts from Palanisamy. After the receipt of notice dated 07.07.2011 sent by the petitioner to Mrs.Saraswathi, Palanisamy had contacted the petitioner and had threatened him to refrain from proceeding further.

3.Pursuant to the notice dated 07.07.2011, in order to harass the petitioner the said Palanisamy had given the above blank signed cheques to the respondent and through him a case was filed in Thiruthuraipoondi Court stating that the petitioner had taken a loan of Rs.10,00,000/- (Rupees ten lakh only) from the respondent, for which the petitioner had given a cheque in dispute. The petitioner is a heart patient and to cause harassment and trouble, the case in STC.No.125 of 2011 has been filed by the respondent.

4.Be that as it may, the petitioner's only contention is that the petitioner finding it difficult to attend the proceedings in Thiruthuraipoondi, which is away from Tanjore and he is willing to meet out the travel expenses of the petitioner, if the case is transferred from Thiruthuraipoondi to Tanjore. The petitioner had filed the medical certificates and the legal notice in support of his contention.

5.This Court perused the materials. The contention of the petitioner and the factual matters, which could be gone only during the trial. This Court relied upon the decision of the Hon'ble Apex Court of India in the case of Bhaskar Industries Limited Versus Bhiwani Denim & Apparels Ltd. and others reported in 2001 SCC (Cri) 1254 have held that in the cases involving offence under Section 138 of the negotiable Instruments Act, if it appears to the Court that personal attendance may result in enormous hardship and cost to an accused, the Court may dispense with his personal attendance either throughout or at any particular stage of the proceedings, after taking an undertaking from him that he would not dispute his identity as the Court and he would have no objection in taking evidence in his absence. Main concern of the Court is administration of criminal justice and for that purpose the Court proceedings should register progress.

6.Taking into consideration of the physical disability and in the interest of justice, the petitioner's personal attendance may be dispensed with and the presence of the petitioner may not be insisted, unless and until the Court below feels that his presence is absolutely necessary.

7.With the above observation, this Criminal Original Petition is disposed of. Consequently, the connected Miscellaneous Petitions are closed.

ah

Sd/-

Assistant Registrar(J)

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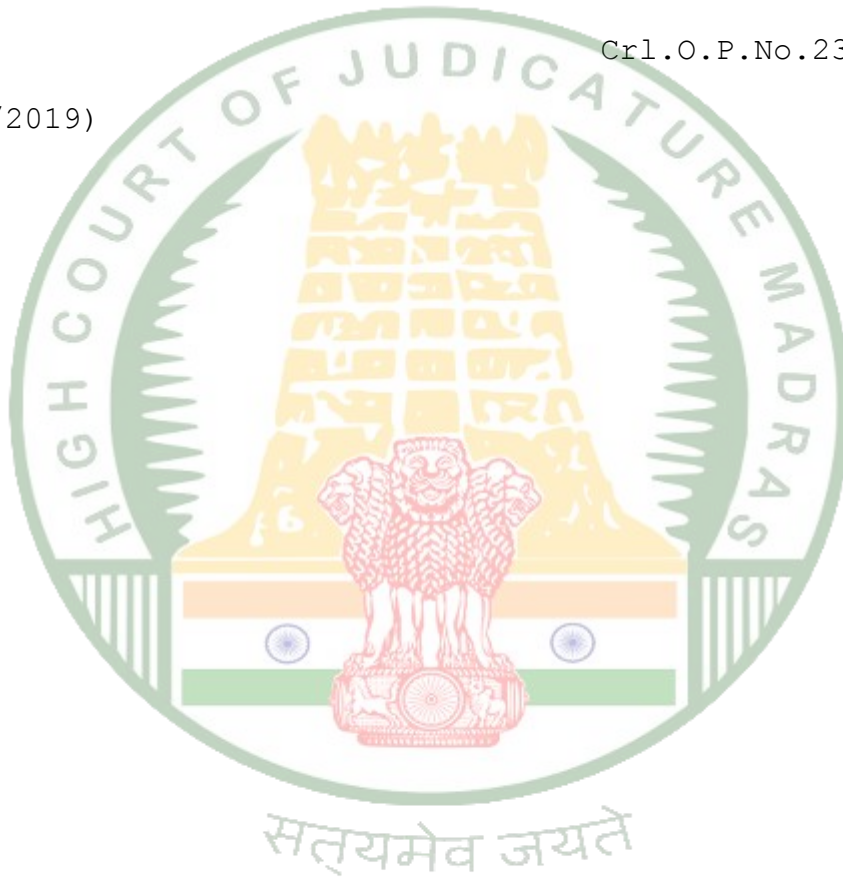
Sub Assistant Registrar

To

1. The Judicial Magistrate,
Fast Track Court,
Thiruthuraipoondi.
2. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.23820 of 2012

Kak(26/03/2019)



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