

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.01.2019

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.958 of 2019

C.Balu

... Petitioner/Petitioners/Accused

Vs.

R.M.Meiyappan

... Respondent/Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of the Criminal Procedure Code, to set aside the order dated 10.07.2018 made in Cr1.M.P.No.4648 of 2018 in C.C.No.2068 of 2016 on the FTC-IV Metropolitan Magistrate, George Town, Chennai and consequently, direct the FTC-IV Metropolitan Magistrate, George Town, Chennai permitting the petitioner to cross examination-P.W.1, the respondent herein.

For Petitioner : Mr.Shanmuga Boopathy
For Respondent : Mr.R.Mahadevan

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the petition filed by the petitioner filed under Section 311 of Cr.P.C to re-call and cross examine P.W.1.

2. The petitioner is facing trial before the Court below for an offence under Section 138 of Negotiable Instruments Act. The complainant examined himself as P.W.1 on 27.01.2017. Sufficient opportunities were given to the petitioner to cross examine P.W.1 and since the petitioner did not cross examine P.W.1, the evidence was closed on 02.03.2018. In the mean time, the petitioner did not appear before the Court. Therefore, non bailable warrant was also issued against him and the same was re-called later. When the case was at the stage of questioning under Section 313 of Cr.P.C, again the petitioner failed to appear before the Court and non bailable warrant was again issued against the petitioner and was later re-call. It is seen

that non bailable warrant was issued against the petitioner at least three times during the pendency of the proceedings.

3. The Court below took into consideration all these facts and also the conduct of the petitioner and proceeded to dismiss the petition by giving sufficient reasons.

4. The learned counsel for the petitioner submitted that the petitioner is working in Integral Coach Factory (ICF) and he was not able to properly keep in touch with the counsel due to his official engagement. The learned counsel further submitted that one last opportunity may be given to the petitioner to re-call and cross examine P.W.1.

5. Mr.R.Mahadevan, learned counsel appearing for the respondent vehemently opposed the petition filed by the petitioner. The learned counsel submitted that right from the beginning, the petitioner has been dragging on the proceedings and thrice non bailable warrant was issued against the petitioner. The learned counsel further submitted that the Court below has given sufficient reasons for dismissing the petition and there is absolutely no illegality or infirmity in the order passed by the Court below. Therefore, the learned counsel submitted that the order passed by the Court below should not be interfered with by this Court.

6. This Court has carefully considered the submission made on either side.

7. This Court does not find any illegality in the order passed by the Court below. The Court has taken into consideration the conduct of the petitioner and has proceeded to dismiss the petition. The Court below has also relied upon the judgment of Hon'ble Supreme Court in this regard.

8. However, in the interest of justice, this Court is of the considered view that one last opportunity can be given to the petitioner to re-call and cross examine P.W.1, by imposing stringent conditions.

9. The order passed by the Court below in C.M.P.No.4648 of 2018, dated 10.07.2018 is hereby set aside. The petitioner is directed to deposit a sum of Rs.25,000/- in C.C.No.2068 of 2016 within a period of one week from the date of a receipt of a copy of this order. After the deposit of the amount, the Court below shall fix a date for the appearance of P.W.1 and on the same day, the petitioner is directed to cross examine P.W.1. If for any reason, the petitioner fails to cross examine P.W.1 on the date of his appearance, the petitioner shall forfeit his right to re-call P.W.1 in future. The petitioner is directed to pay a sum of Rs.5,000/- towards

cost, to the counsel for the respondent, before P.W.1 is put in box for cross examination.

10. Accordingly, this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings within a period of two months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

To Sub Assistant Registrar

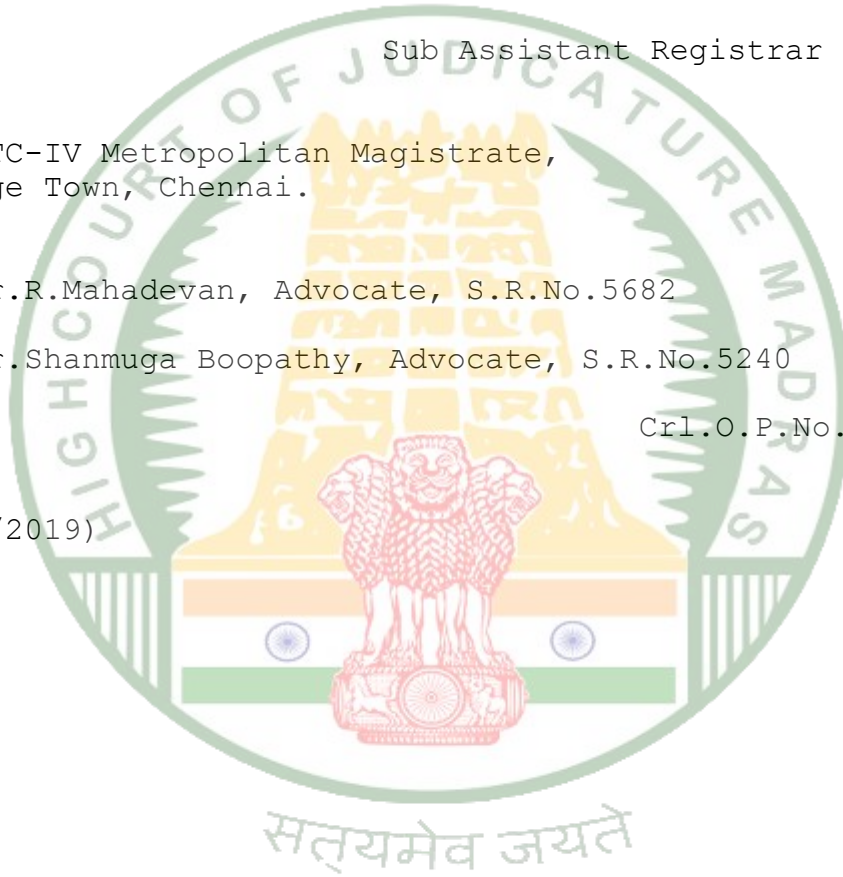
1. The FTC-IV Metropolitan Magistrate,
George Town, Chennai.

+1cc to Mr.R.Mahadevan, Advocate, S.R.No.5682

+2cc to Mr.Shanmuga Boopathy, Advocate, S.R.No.5240

Cr1.O.P.No.958 of 2019

RJI (CO)
GSP (28/01/2019)



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