

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.07.2019

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THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Cr1.O.P.No.16987 of 2019

Ashokan

... Petitioner/Petitioner

Vs.

J.Prem Anand

... Respondent/Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to set aside the order passed by the learned Judicial Magistrate No.2, FTC at ML, Coimbatore, in C.M.P.No.9989 of 2018, dated 26.03.2019 and permit the petitioner to pay the cost a sum of Rs.5,000/- before the Legal Aid Authorities at Coimbatore Magistrate Court.

For Petitioner : M/s.T.S.N.Prabhakaran

O R D E R

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

2. The petitioner filed a criminal complaint under Section 138 of the Negotiable Instruments Act, against the respondent. The complaint was filed with a delay of 37 days. Therefore, petition came to be filed in C.M.P.No.9989 of 2018 to condone the delay of 37 days in filing the complaint. The petition was allowed by the Court below by an order dated 02.01.2019 by imposing a condition that the petitioner should deposit of Rs.5,000/- towards cost to the other side payable on or before 22.02.2019.

3. The petitioner did not pay the cost within the time stipulated and on 05.03.2019, when the case was called, the petitioner did not appear before the Court and therefore the Court below dismissed the petition by order dated 26.03.2019.

4. The learned counsel for the petitioner submitted that the absence of the petitioner before the Court below is neither wilful nor wanton and that the petitioner is suffering from various physical ailments. The learned counsel further submitted that the petitioner is ready to comply with the condition immediately and that the petitioner must be given an opportunity to prosecute the complaint filed by him under Section 138 of the Negotiable Instruments Act.

5. This Court has carefully considered the submission made by the learned counsel for the petitioner and the materials available on record.

6. This Court is of the considered view that opportunity must be given to the petitioner to prosecute the complaint filed by him under Section 138 of the Negotiable Instruments Act. The order passed by the Court below in C.M.P.No.9989 of 2018, dated 26.03.2019, is hereby set aside. The petitioner is directed to deposit a sum of Rs.6,000/- towards cost in favour of the Chief Justice Relief Fund on or before 11.07.2019. The petitioner shall thereafter file a memo before the Court below along with the receipt for the payment of cost and the Court below shall condone the delay in filing the complaint.

7. It is made clear that if the petitioner fails to deposit the cost imposed by this Court within a time stipulated, the order passed by the Court below, dated 28.03.2019, shall stand revived.

8. This Criminal Original Petition is disposed of accordingly.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.2,
FTC at ML, Coimbatore.

2.The Chief Judicial Magistrate,
Coimbatore.

3.The Secretary,
The Legal Aid Authorities(at Coimbatore Magistrate Court).
Judicial Magistrate, Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.T.S.N.Prabhakaran, Advocate, S.R.No.55848

CrI.O.P.No.16987 of 2019

GP (CO)

RRS (04/07/2019)



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