

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.29780 & 29786 of 2018
and Crl.M.P.Nos.17451 & 17453 of 2018

A.V.K.Umapathi ... Petitioner in both Crl.OP's.

Versus

B.Rajeswaran ... Respondent in both Crl.OP's.

PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to set aside the order in C.M.P.No.1191 & 2671 of 2017 respectively in C.C.No.150 of 2008 on the file of the Judicial Magistrate Court, Madurantakam and permit the petitioner to call for the records and examine the branch manager UCO Bank, Purasawalkam.

For Petitioner : V.Krishnamoorthy in both Crl.OP's.

O R D E R

These petitions have been filed against the dismissal of the petitions filed by the petitioner under Section 311 of Cr.P.C to recall DW.1 and another petition for issuing summons to the Bank manager of UCO Bank to produce documents.

2.The petitioner is an accused facing trial before the Court below for an offence under Section 138 of the Negotiable Instruments Act. A complaint was filed in the year 2008 and it has been pending for the last ten years.

3.The Court below dismissed the petitions filed by the petitioner mainly on the ground that the complaint was filed in the year 2008 and the trial commenced in the year 2013. The witness on the side of the complainant was examined in the year 2013 and thereafter the petitioner has examined himself as DW.1 in the year 2013. The case was at the stage of final arguments in the year 2014.

4.The present petitions came to be filed before the Court below in the year 2017. The Court below therefore, took into consideration the enormous delay in filing the petition and also

took into consideration the fact that the entire attempt of the petitioner was only drag on the proceedings and there is absolutely no explanation as to why such a petition was not filed at an earlier point of time.

5.The learned counsel for the petitioner would submit that since the presumption under Section 139 of the Negotiable Instruments Act is as against the petitioner, the petitioner has to be given an opportunity to examine the UCO Bank Manager and also to direct him to produce certain documents. In order to substantiate his arguments, the learned counsel for the petitioner relied upon the Judgment of this Court in Crl.A.No.229 of 2007 and Crl.M.P.No.1610 of 2016 in the case of M/s.Chinthamani Foods & Versus D.Chandrasekar, dated 20.02.2017.

6.This Court is not able to find any illegality or infirmity in the order passed by the Court below. It is shocking that a complaint filed under Section 138 of the Negotiable Instruments Act is kept pending for more than ten years.

7.This goes against the very object of act, which contemplates summary proceedings to be completed within six months. There is absolutely no explanation on the side of the petitioner as to why such a petition was not filed before the Court below during the year 2013 to 2015, when the trial was going on. When the case was at the stage of final hearing from the year 2014, the petitioner has chosen to file these petitions in the year 2017. The Court below has rightly dismissed the petitions by giving cogent reasons. It is true that the presumption is as against the petitioner under Section 139 of the Negotiable Instruments Act. However, the petitioner should be vigilant enough to conduct the trial in a proper manner and he cannot wait for years together to file a petition under Section 311 of Cr.P.C. The Judgment cited by the learned counsel for the petitioner will not comply to the facts of this case.

8.In the result, these Criminal Original Petitions are dismissed 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. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vv2/rpl

To

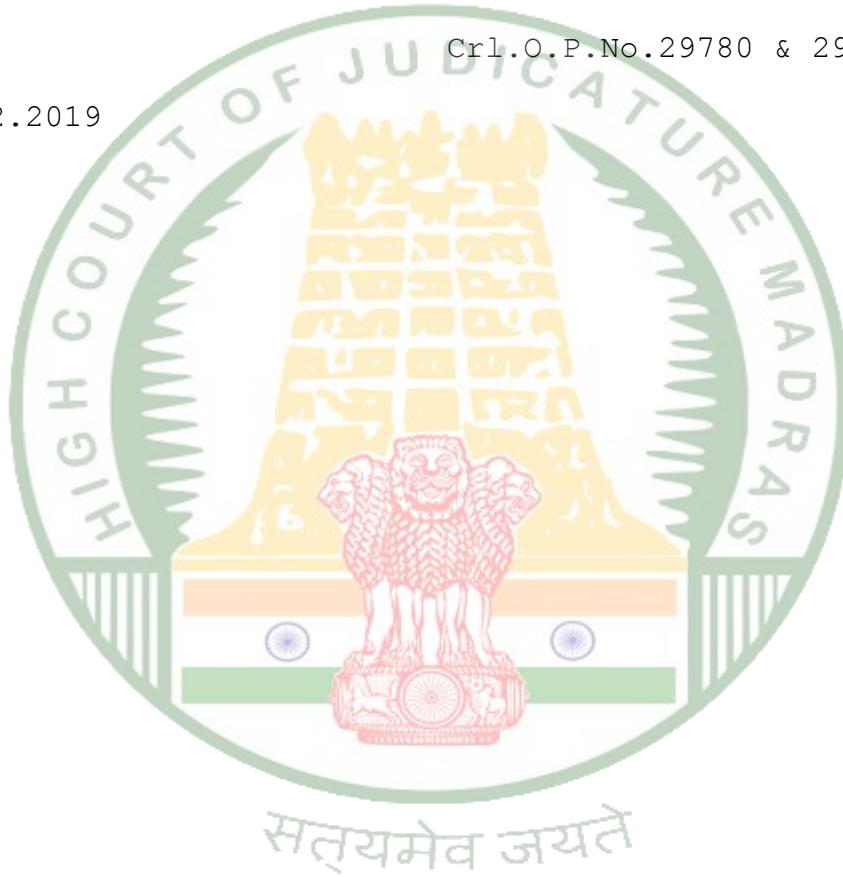
1.The Judicial Magistrate Court,
Madurantakam.

2.The Public Prosecutor,
High Court, Madras.

+2 cc's to Mr.V.Krishnamoorthy, Advocate SR.Nos.4098&4099

Crl.O.P.No.29780 & 29786 of 2018

CSL/07.02.2019



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