

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.01.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.30374 of 2018

P.Jayabal

... Petitioner

-Vs-

Radhakrishnan

... Respondent

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for records in C.C.No.73/2014 on the file of Judicial Magistrate at Gingee, to set aside the dismissal order of restoration petition in Crl.M.P.No.2506/2018 dated 09.11.2018, to issue direction to Lower Court issue fresh warrant against the Respondent/Accused which was filed already in Restoration Petition.

For Petitioner : Mr.P.Thirumalai

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the restoration petition filed by the petitioner in Crl.M.P.No.2506 of 2018.

2. The petitioner is the complainant in a private complaint filed against the respondent for an offence under Section 420 of IPC. The Court below passed an order issuing a non-bailable warrant against the respondent for his non-appearance. However, the petitioner did not pay the process fee and therefore, the complaint itself came to be dismissed on 01.09.2017 under Section 204(4) of Cr.P.C.

3. The petitioner has therefore chosen to file a petition to restore the complaint by relying upon Rule 120 of the Criminal Rules of the Practice. The Court below has dismissed the petition on the ground that Rule 120 of Criminal Rules of Practice will have no application to the facts of the case.

4. There are absolutely no merits in this petition. Rule 120 of the Criminal Rules of Practice, will apply only to the case where the process fee is paid after the date fixed for the payment but before the complaint is dismissed under Section 204 of Cr.P.C. This Rule is more in the nature of excusing the delay in paying the process fee. However, when the complaint has already been dismissed under Section 204(4) of Cr.P.C., the learned Magistrate cannot recall his order by virtue of bar contained under Section 362 of Cr.P.C. Therefore, the Court below is right in dismissing the petition.

5. In the result, the Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

kal/ssr
To

1. The Judicial Magistrate,
Gingee.

2.- do thro Judicial Magistrate,
Villupuram.

+1cc to Mr. P.Thirumalai, Advocate SR.No. 82

Cr1.O.P.No.30374 of 2018

A.SK(31/01/2019)

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