



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2019

CORAM:

**THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA**

WEB COPY

Crl.O.P.(MD).No.18883 of 2019  
and Crl.MP.(MD) No. 11079 of 2019

K.A.Kannan

...Petitioner/ Petitioner/  
Accused

Vs.

P. Muthukumaran

... Respondent/ Respondent/  
Complainant

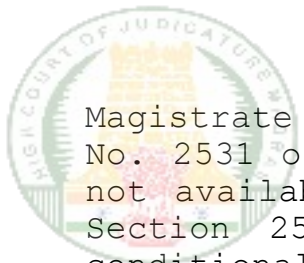
**PRAYER:** This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in order of the learned Judicial Magistrate (Fast Track Court, Magistrate Level) Theni, in Crl.M.P.No. 2531 of 2019 in STC No. 1 of 2017 dated 19.11.2019 and set aside the same.

For Petitioner : Mr.Vivek Kumar

**O R D E R**

The Criminal Original Petition has been filed to set aside the order, dated 19.11.2019 passed by the learned Judicial Magistrate (Fast Track Court, Magistrate Level) Theni, in Crl.M.P. No. 2531 of 2019 in STC No. 1 of 2017.

2. The learned counsel appearing for the petitioner would submit that the petitioner is facing trial in STC No. 1 of 2017 before the learned Judicial Magistrate, Theni for the offence under Section 138 of Negotiable Instruments Act. He would further submit that the petitioner has filed a petition in Cr.M.P. No. 2531 of 2019 in STC No. 1 of 2017 for recalling the P.W.1/ complainant for cross examination. The trial Court had on 13.11.2019 while allowing Crl.M.P. No. 2531 of 2019 passed a conditional order directing the petitioner to pay a sum of Rs.5000/-as Costs (Rupees Five Thousand Only) to the respondent on or before 19.11.2019 and also directed the petitioner to examine the complainant on the date of his appearance, failing anyone of the condition had held that the petition in Crl.M.P. No. 2531 of 2019 shall stand dismissed automatically. The petitioner and his counsel were not present in the Court on the date of passing of the order i.e., on 13.11.2019 and further the conditions in the order did not reflect in the E-Courts status uploaded and thereby the petitioner was unable to comply with the conditional order passed by the learned Judicial



Magistrate (Fast Track Court, Magistrate Level), Theni, in Crl.M.P. No. 2531 of 2019. Further, on 19.11.2019 the complainant was also not available and the petition has been filed on his behalf under Section 256 of Cr.P.C. and the same was allowed. Since the conditional order was not complied, the trial Judge had dismissed the Crl.M.P. No. 2531 of 2019 on 19.11.2019. He would further submit that unless the order of dismissal for non compliance of condition is set aside and a chance is given to the petitioner to cross examine P.W.1, the petitioner will be put to great hardship. He would further submit that the petitioner is prepared to pay the cost of Rs.5000/-and the petitioner also undertakes to abide by any other condition to cross examine the P.W.1 on the next hearing date or on any other date fixed by the Court. He would also submit that the case stands posted for defence witness on 02.01.2020.

3. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

4. Considering the facts and circumstances of the case, the order, dated, 19.11.2019 passed by the learned Judicial Magistrate (Fast Track Court, Magistrate Level) Theni, dismissing Crl.M.P. No. 2531 of 2019 in STC No. 1 of 2017 for non compliance of condition is set aside. The learned trial Judge is directed to permit the petitioner to cross examine P.W.1 on the next hearing date i.e., 02.01.2020 or on any other date fixed by the trial Court subject to the following condition.

(i). The petitioner shall deposit an amount of Rs.7,500/- (Rupees Seven Thousand Five Hundred Only) before the trial Court on or before 31.12.2019.

(ii). Out of the amount of Rs.7,500/- deposited, an amount of Rs.5,000/- shall be paid to the complainant/P.W.1 and an amount of Rs.2,500/-shall be paid to the Taluk Legal Services Authority attached to the trial Court.

(iii). The petitioner shall file an affidavit of undertaking that he will cross examine P.W.1/Complainant on 02.01.2020 or any other date fixed by the trial Judge and that he will co-operate for progress of the trial.

(iv). In the event of failure to cross examine P.W.1 the petitioner will loose his chance.

5. With the above directions, the Criminal Original is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //



To

The Judicial Magistrate,  
(Fast Track Court, Magistrate Level)  
Theni.

WEB COPY

**Copy To:**

The Officer-in-charge,  
Taluk Legal Services Committee,  
attached to the Judicial Magistrte Court,  
Theni.

+1 CC to M/s.A.MARTHANDEVARMAN, Advocate ( SR-105461[F] dated  
17/12/2019 )

Crl.O.P. (MD) .No.18883 of 2019  
17.12.2019

ksa

MS/VR-PN/SAR-1/18.12.2019/3P.4C