

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.6238 of 2020
and
CRL.M.P.No.3480 of 2020

Paramasivam

...Petitioner/Accused

Vs.

P. Soundararajan

...Respondent/Complainant

PRAYER :

Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records in pursuant to the CMP.No.3164 of 2019 in C.C.No.107 of 2018 on the file of the Judicial Magistrate, Fast Track Court, Alandur, and set aside the same.

For Petitioner : Mr.M.Sathish Kumar

For Respondent : No appearance

O R D E R

This Criminal Original Petition has been filed challenging the order passed in CMP.No.3164 of 2019 in C.C.No.107 of 2018 on the file of the Judicial Magistrate, Fast Track Court, Alandur, and thereby dismiss the petition filed by the petitioner under Section 311 of Cr.P.C., to recall PW1.

2. The learned counsel for the petitioner would submit that the petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act. The respondent was examined as PW1 -in-chief and on the date of Chief-Examination, the petitioner could not able to cross examine PW1. Therefore, the evidence of PW1 was closed by the trial court on 06.03.2019. The petitioner was arrested and remanded to judicial custody in connection with the CBI cases in CrI.A.Nos.802 of 2007, 803 of 2007 and 805 of 2007 from 03.12.2018 onwards. By a common order passed by the Hon'ble Supreme Court of India in SLP(CrI).Nos.11197, 11198 and 11199 of 2018 dated 12.04.2019, the petitioner was released on bail. Therefore, the petitioner could not be able to engage

proper counsel to cross examine PW1. Then the learned counsel appeared before the trial court has wrongly submitted that the petitioner was ill for a long time and as such, he could not be able to instruct his counsel to cross examine the PW1. Therefore, the trial court has dismissed the petition filed by the petitioner under Section 311 of Cr.P.C.,

3. Heard Mr.M.Sathish Kumar, learned counsel for the petitioner.

4. Though notice served to the respondent and his name is also printed in the cause list, no one appeared on behalf of the respondent by person or through counsel.

5. It is seen that the petitioner is an accused in the complaint lodged by the respondent under Section 138 of the Negotiable Instruments Act. On perusal of records, it is seen that the petitioner was under judicial custody in respect of CBI cases in CrI.A.Nos.802 of 2007, 803 of 2007 and 805 of 2007 from 03.12.2018 onwards and thereafter, he was granted bail by the the Hon'ble Supreme Court of India in SLP(CrI).Nos.11197, 11198 and 11199 of 2018 dated 12.04.2019. Therefore, the petitioner could not be able to instruct his counsel to cross examine PW1. As such, the trial court has closed the evidence of PW1 on 06.03.2019

6. Considering the facts and circumstances of the case, this Court feels that the petitioner may be given one more opportunity to put fourth his defence. Accordingly, the order dated 07.11.2019, passed by the learned Judicial Magistrate, Fast Track Court, Alandur, in CMP.No.3164 of 2019 in C.C.No.107 of 2018, is hereby set aside and the petitioner is permitted to cross examine P.W.1 on the next hearing date by payment of necessary charges. If the petitioner failed to cross-examine P.W.1, the trial Court is directed to proceed with trial in accordance with law.

7. In the result, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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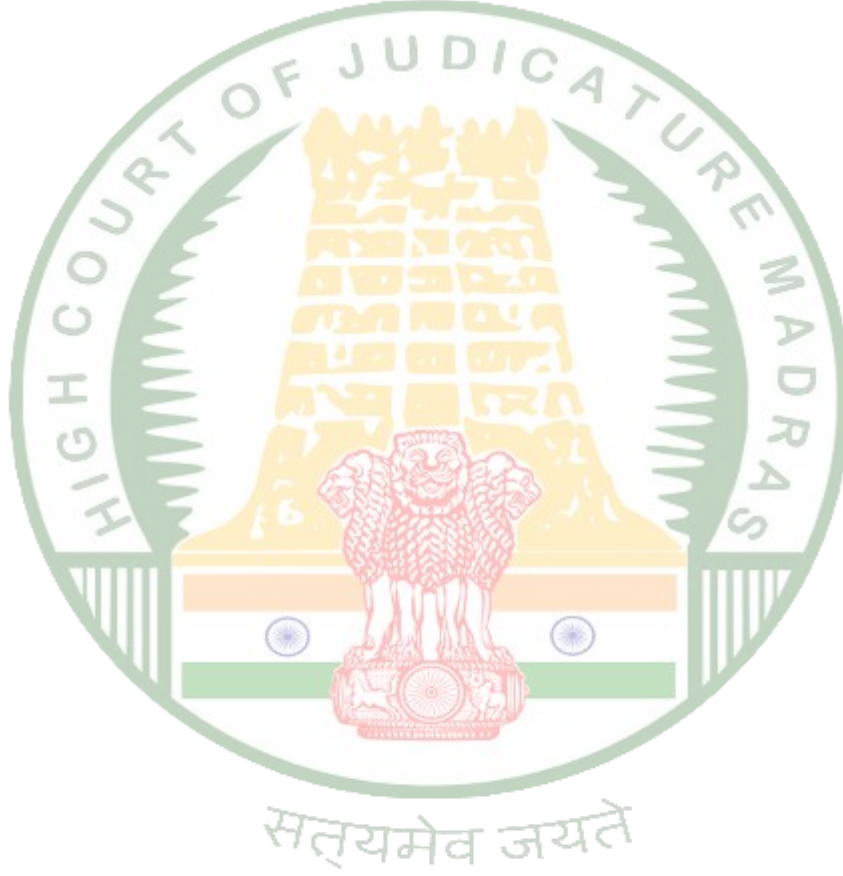
Sub Assistant Registrar

To

1. The Judicial Magistrate,
Fast Track Court, Alandur.

CRL.O.P.No.6238 of 2020
and
CRL.M.P.No.3480 of 2020

KK (CO)
RV (02/11/2020)



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