

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.M.P.Nos. 8423 and 8424 of 2020
in O.P.No.17264 of 2020

N.Aleem Basha Petitioner in both Crl.M.Ps

Vs

- 1 M.Faaiza Samreen
D/O.Maddekar Abdul Shukkor.
- 2 Minor A.Mohammed Azeem
S/O.Aleem Basha rep. by his mother and
Guardian Mrs. M.Faaiza Samreen both
residing at near Islamiah Elementary School
Basheerabad Vaniyambadi.

...Respondents in both Crl.M.Ps

Prayer in Crl.M.P.Nos.8423 of 2020: Criminal Miscellaneous petitions filed under Section 482 of Criminal Procedure Code, to extend the time for deposit of Rs.1,50,000/- in the credit of M.C.No.13/2017 currently pending adjudication before learned Judicial Magistrate Vaniyambadi.

Prayer in Crl.M.P.Nos.8424 of 2020: Criminal Miscellaneous petitions filed under Section 482 of Criminal Procedure Code, to modify the conditional order dated 04.11.2020 of this Court passed in Crl.M.P.No.6669 of 2020 in Crl.O.P.No.17264 of 2020 i.e., the Judicial Magistrate Court, Vaniyambadi to accept the conditional deposit of Rs.1,50,000/- from the petitioner in the credit of M.C.No.13/2017.

For Petitioner: Mr.K.V.Bhashyam Chari

COMMON ORDER

Both miscellaneous petitions have been filed under Section 482 of Criminal Procedure Code to modify the Conditional Order dated 04.11.2020 of this Court passed in Crl.M.P.No.6669 of 2020 in Crl.O.P.No.17264 of 2020 and to issue direction to the Judicial Magistrate Court, Vaniyambadi to accept the conditional deposit of Rs.1,50,000/- from the petitioner in the credit of

M.C.No.13 of 2017.

2. Originally the petitioner herein filed a criminal original petition in O.P.No.17264 of 2020 and seeking the relief to set aside the orders passed in CrI.Rev.No.22 of 2019 on the file of the learned III Additional Judge, Vellore, wherein, the learned III Additional Judge, Vellore, confirming the order passed by the learned Judicial Magistrate, Vaniyambadi in M.C.No.13 of 2017.

3.At the time of admission, along with the criminal original petition, the petitioner herein filed a Criminal Miscellaneous Petition in Cr.M.P No.6669 of 2020 seeking to stay the execution of the order dated 22.01.2020 passed by the learned III Additional Sessions Judge, Vellore in CrI.Rev.No.22 of 2019. On 04.11.2020, at the time of disposing Cr.M.P No.6669 of 2020, this Court granted an order to stay for further proceedings in M.C.No.13 of 2017, on condition that the petitioner deposits a sum of Rs.1,50,000/- to the credit of M.C.No.13 of 2017 on or before 07.12.2020.

4.The typed set now produced by the petitioner clearly shows that when, at the time, the petitioner attempted to comply with the conditional order dated 04.11.2020, the learned Judicial Magistrate, Vaniyambadi refused to record the memo filed by the petitioner and not to accept the deposit of Rs.1,50,000/- made by the petitioner by stating that there was no specific order to the Judicial Magistrate, Vaniyambadi for accepting the deposit made by the petitioner. Only under the said circumstances, the petitioner is before this Court with the present petitions.

5.Now, on going through the order dated 04.11.2020 passed in Criminal Miscellaneous Petition No.6669 of 2020 in paragraph No.1, it was clearly mentioned that the said application has been filed only to stay the execution of the order dated 22.01.2020 passed by the learned III Additional Sessions Judge, Vellore in CrI.Rev.No. 22 of 2019, wherein, the order dated 31.05.2019 passed by the learned Judicial Magistrate, Vaniyambadi in M.C.No.13 of 2017 was confirmed. So, the said paragraph is very clear that the order passed by this Court was pertains to M.C.No.13 of 2017 alone. After mentioning the name of the Judicial Magistrate and case number in the first paragraph itself, it is not necessary for this Court to reproduce the same in each and every paragraph of this order. In paragraph No.3, there was a clear direction to the petitioner to deposit a sum of Rs.1,50,000/- in M.C.No.13 of 2017 on or before 07.12. 2020.

6. Therefore, a conjoint reading of paragraph No. 1 and 3 will clearly reveal the fact that the sum has to be deposited to the credit of M.C.No.13 of 2017 pending on the file of Judicial Magistrate, Vaniyambadi. Being a Judicial Officer, without going through the whole order, he has returned the Memo filed by the petitioner and refused to accept the deposit. The reason stated by the Judicial Magistrate, Vaniyambadi that there was no specific order for accepting the deposit is nothing but a clear disobedience of the order passed by this Court and further the same amounts to dereliction of duty. Since the petition is pertains to the maintenance case, it is for the Judicial Magistrate to know the urgency of the petition. Without knowing the same, mechanically he had returned the memo, due to which, the petitioner is forced to file these criminal miscellaneous petitions. The entire exercise done by the Judicial Magistrate, Vaniyambadi shows that he had made endorsement for returning the memo with non-application of mind. Therefore, this is an appropriate case for calling for an explanation from the Judicial Magistrate, Vaniyambadi and therefore, Registry is directed to call for an explanation from the Judicial Magistrate, Vaniyambadi and directed to place the same before this Bench. Further, Judicial Magistrate, Vaniyambadi is directed to accept the deposit of rupees 1,50,000/- made to the credit of M.C.No.13 of 2017 on the file of Judicial Magistrate, Vaniyambadi. The petitioner is permitted to make such deposit on or before 03.03.2021.

7. Accordingly, the criminal miscellaneous petitions are ordered.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msv

Copy to: The Judicial Magistrate,
Vaniyambade.

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Crl.M.P.Nos. 8423 and 8424 of 2020
in Crl.O.P.No.17264 of 2020

SSN(CO)
CB(02/03/2021)