

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2021

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl. OP Nos.20821 & 20831 of 2020
and Crl. MP Nos.8886 & 8894 of 2020

Chandrasekaran ... Petitioner/ Complainant
in both the petitions

vs.

S.R.Sivalingam Respondent / Accused
in both the petitions

PRAYER in Crl OP No.20821/20: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 19.10.2020 passed in CMP No.400 of 2019 in C.C.No.278 of 2016 on the file of Judicial Magistrate No.1, Tindivanam and allow the above Criminal Original Petition.

PRAYER in Crl OP No.20831/20: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in CMP No.399 of 2019 in C.C.No.278 of 2016 on the file of Judicial Magistrate No.1, Tindivanam.

For Petitioner : Mr.V.V.Sairam
(in both the petitions)

For Respondent : Mr.M.Govindaraju
(in both the petitions)

ORDER

These petitions have been filed challenging the order passed by the Court below dismissing the applications filed by the petitioner for recalling P.W.1 to file additional documents and to condone the delay in filing the documents, on the ground that the petitioner has not paid the cost of Rs.1,000/- each as directed by the Court below.

2. The petitioner has filed a complaint against the respondent for an offence under Section 138 of the Negotiable Instruments Act. The case was at the stage of trial. The

petitioner filed two applications in CMP Nos.399 and 400 of 2019 for recalling P.W.1 to file the additional documents and to condone the delay in filing the documents. These applications were allowed by the Court below by an order dated 23.09.2020 by imposing a condition that the petitioner must pay a cost of Rs.1,000/- in each of the application to the respondent on or before 30.09.2020.

3. According to the petitioner, he tendered the amount of Rs.2,000/- to the respondent and it was refused. Thereafter the petitioner took Demand Drafts in the name of the Court. The Court below refused to receive the Demand Drafts and dismissed both the applications on the ground that the condition has not been complied with. Aggrieved by the same, the present petition has been filed before this Court.

4. Heard Mr.V.V.Sairam, learned counsel appearing for the petitioner in both the petitions and Mr.M.Govindaraju, learned counsel appearing for the respondent in both the petitions.

5. In the considered view of this Court, the Court below ought to have permitted the petitioner to deposit the Demand Drafts, since the respondent was refusing to receive the cost. Instead the petitioner has been unnecessarily driven to this Court challenging the order passed by the Court below dismissing the applications on a frivolous ground.

6. In view of the above, the order passed by the Court below dated 19.10.2020 in CMP Nos.399 and 400 of 2019 is hereby set aside. It is brought to the notice of this Court that the respondent has already received the cost on 14.01.2021. In view of the same, both the applications are allowed. The Court below is directed to permit recall of P.W.1 for marking additional documents by fixing a date. It is made clear that the cross-examination must also be done on the same day.

7. These Criminal Original petitions are allowed and there shall be a direction to the Court below to complete the proceedings in C.C. No.278 of 2016 within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

jv

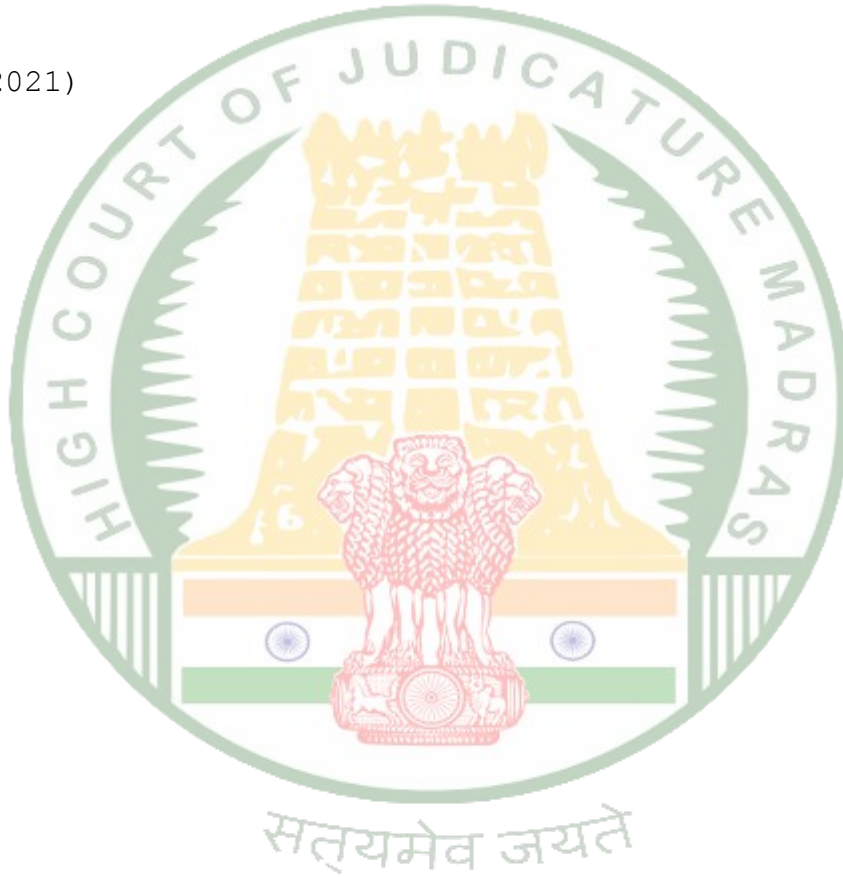
To

1.The Judicial Magistrate No.1,
Tindivanam.

2. The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

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and Crl. MP Nos.8886 & 8894 of 2020

AAB (CO)
CB(08/03/2021)



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