



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.23777 of 2021

M.Tamizhchelvan

...Petitioner/Accused

Versus

K.Dhanabalan

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the order dated 10.08.2021 made in C.M.P.No.1073 of 2021 in S.T.C.No.201 of 2019 on the file of the learned Judicial Magistrate, Fast Track Court No II, Erode and set aside the same by allowing this Criminal Original Petition.

For Petitioner : Mr.J.Ranjithkumar

#### O R D E R

This petition has been filed by the petitioners to call for the records relating to the order dated 10.08.2021 made in C.M.P.No.1073 of 2021 in S.T.C.No.201 of 2019 on the file of the learned Judicial Magistrate, Fast Track Court No II, Erode and set aside the same by allowing this Criminal Original Petition.

2. The petitioner who is an accused in S.T.C.No.201 of 2019 for the offence punishable under Section 138 of Negotiable Instruments Act on the complaint filed by the respondent, has filed a petition under Section 311 Cr.P.C., to recall P.W.1 for cross examination in C.M.P.No.1073 of 2021 and the same was allowed vide order dated 30.03.2021 with two conditions and one of the condition is that the petitioner should pay a costs of Rs.3,000/- to the respondent on or before 28.04.2021 and due to non payment of costs the trial Court dismissed the petition on 10.08.2021. Thereafter the petitioner has filed a petition for restoration of the dismissal order in C.M.P.No.3408 of 2021 which was dismissed by the trial Court on 10.08.2021, by observing that the trial Court has not power to extend the time for making payment of cost and the remedy available to the petitioner is only to approach the Appellate Court. Hence, this petition.

3. The contention of the learned counsel appearing for the petitioner is that when the petitioner filed a petition under Section 311 Cr.P.C. to recall P.W.1 for cross



examination, the Trial Court without any reasons allowed the same, by order dated 30.03.2021 with the condition to the petitioner to deposit costs of Rs.3,000/- to the respondent/complainant on or before 28.04.2021, but dismissed the same for non payment of the said amount, without considering the restricted movements due to second wave of covid 19 pandemic and the health condition of the petitioner.

4. Heard the learned counsel appearing for the petitioner. Perused the records.

5. Considering the facts and circumstances and considering the fact that due to second wave of covid 19 pandemic, the Courts were closed from 15.04.2021 and thereafter, the Courts started working partially during August 2021, there is no justification on the part of the trial court in dismissing the petition filed by the petitioner.

6. In view of the same, the order passed by the trial Court on 10.08.2021 in C.M.P.No.1073 of 2021 in S.T.C.No.201 of 2019 is set aside. The Petitioner is directed to pay costs of Rs.3,000/- as ordered by the Lower Court, within a period of two weeks from the date of receipt of a copy of this order, to the respondent and to continue further cross examination of P.W.1, without further delay.

This Criminal Original Petition is disposed of accordingly.

Sd/-  
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

arr

To

1. The Judicial Magistrate,  
Fast Track Court No II,  
Erode.

2. - do- through Chief Judicial Magistrate,  
Erode.

+1cc to Mr.J.Ranjithkumar, Advocate SR.No.68014

CrI.O.P.No.23777 of 2021

CA (CO)  
GMY (04/01/2022)

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