



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.10.2021

CORAM :

THE HONOURABLE **Mr. JUSTICE G.ILANGOVAN**

Crl.O.P.(MD)No.9913 of 2021

V.Murugan ... Petitioner/Petitioner/
Complainant

Vs.

A.Nirmal ...Respondent/Accused

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the impugned order passed in unnumbered S.T.C.No. Of 2019, dated 05.02.2020, on the file of the learned Judicial Magistrate Court, Melur, Madurai District and set aside the same as illegal and consequently direct the learned Judicial Magistrate Court, Melur, Madurai District to take the complaint of the revision petitioner, pending in unnumbered S.T.C.No. of 2019, on 05.02.2020 and afford an opportunity to lead evidence and decide the case on merits.

For Petitioner : Mr.R.Murugan

ORDER

This petition is filed seeking to set aside the return order dated 05.02.2020, with direction to the learned Judicial Magistrate, Melur to take on file the unnumbered private complaint that has been presented by the petitioner.

2.Now, the grievance of the petitioner is that he filed a private complaint for the offence punishable under Section 138 of Negotiable Instrument Act, before the Judicial Magistrate Court, Melur on 23.12.2019 and it came to be returned for rectifying some defects. After rectifying those defects, when it was represented, it was returned stating that the cheque was returned for the reason that "Non CTS Cheque". So, the offence under Section 138 of NI Act is not maintainable. With the above observation, the complaint has been returned. Challenging the same, this petition came to be filed.

3.A report has been called for from the concerned Court with regard to the specific aspect. The present Judicial Magistrate, Melur has submitted a report stating that the return has been made by the then Judicial Magistrate and the returned records were taken back by the concerned counsel. Hence, she is not in a position to



submit any remarks over the above said return.

4.Now, it is seen that on the question of maintainability, the private complaint has been returned. Maintainability can be considered only at the time of taking on file and recording the statement of the complainant. Even without going through the process, the complaint has been returned. Hence, the return order passed by the then Judicial Magistrate, Melur on 05.02.2020 is not sustainable under law. The Judicial Magistrate, Melur is directed to process the private complaint that has been filed by the petitioner as per law and decide the same on merits. After completion of the process, compliance report must be submitted to the Registry of this Court.

5.With the above said direction, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Judicial Magistrate, Melur.

Copy to

The Registrar Judicial,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.MURUGAN, Advocate (SR-31433[F] dated 06/10/2021)

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