

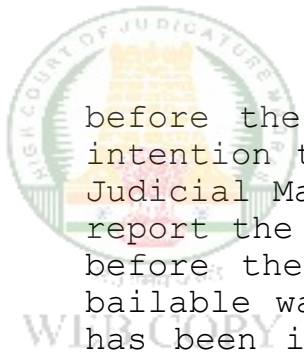


of the Negotiable Instruments Act. While at the time of filing the said complaint, the respondent filed Crl.M.P.No.1408 of 2020, wherein he prayed to condone the delay of 15 days in filing the private complaint before the Court. By order dated 21.01.2021, the said application filed by the respondent was allowed and the delay of 15 days was condoned. After condoning the delay, in respect of private complaint filed by the respondent, the learned Judicial Magistrate took cognizance under Section 138 of the Negotiable Instruments Act and assigned with Calendar Case number as '19 of 2021'. Challenging the same, particularly, in respect of condonation of delay, the petitioner herein filed Criminal Revision, wherein he prayed to set aside the order of condonation of delay and to dismiss the private complaint filed by the respondent. After taking cognizance, the said revision was pending before this Court without any interim order. Only in the said circumstances, the revision petitioner has filed this Criminal Miscellaneous Petition, wherein he prayed to set aside the order of non-bailable warrant issued against him.

4.It is the contention raised by the learned counsel appearing for the petitioner that after taking cognizance, the learned Judicial Magistrate, Fast Track Court, Uthamapalayam, without following the procedure contemplated under Chapter XX of Code of Criminal Procedure, proceeded with the case and ultimately, issued non-bailable warrant. It is the specific submission of the petitioner that, before examining the witness on the side of complainant, the petitioner herein was not examined in terms of Section 251 Cr.P.C. in respect of allegation levelled against him.

5.Now, on going through the said submission with the relevant records, it appears that along with the miscellaneous petition, the petitioner has produced the diary extract pertains to C.C.No.19 of 2021. Now, on going through the said diary extract, it is apparent that after receipt of the Memo filed by the petitioner, without examining him under Section 251 Cr.P.C., the chief affidavit of P.W.1 was received and subsequently, after receipt of the chief affidavit, the learned Judicial Magistrate passed an order for closing respondent's/complainant's side evidence and posted the matter for 313 Cr.P.C. examination. If it is true the said entry made in the diary extract is correct, the learned Judicial Magistrate has violated the procedure contemplated. However, now, the issue raised before this Court is that, whether the non-bailable warrant issued against the petitioner is found correct or not. Since the procedural irregularity committed by the learned Judicial Magistrate is separate issue, the same has to be decided separately and not in this miscellaneous petition.

6.In fact, the entries made in the diary extract show that the case pertains to this petition was adjourned time and again from 19.02.2021 to 15.09.2021, nearly for 17 hearings. In the above said



before the Court. It shows that the petitioner is not having any intention to proceed with the case. Even assuming that the learned Judicial Magistrate committed a mistake, it is for the petitioner to report the same before this Court. In otherwise, refusing to appear before the Court is intolerable one. Moreover, as of now, non-bailable warrant is pending against the accused. Further, the same has been issued by the competent authority. Therefore, it is for the petitioner to surrender before the said Court and file a petition under Section 70(2) Cr.P.C. Instead of filing such application before the trial Court, filing this type of application, is nothing but abuse of process of law. More than that, in the main revision case, for the past 7 months, notice was not served on the respondent, which shows that the petitioner is purposely with an intention to prolong the entire proceedings, filed this type of application and therefore, the present application has to be dismissed with exemplary costs.

7. Accordingly, in the light of the above discussions stated supra, this Criminal Miscellaneous Petition filed by the petitioner is dismissed with the cost of Rs.5,000/-. The petitioner is directed to pay the said amount to Ms Chellamuthu Trust and Research Foundation, 643, K.K.Nagar, Madurai - 625 020, within a period of 15 days from the date of receipt of a copy of this order. The petitioner is directed to surrender before the trial Court within one week from the date of payment of cost. After surrendering before the trial Court, he is directed to file an application under Section 70(2) Cr.P.C., and on such occasion, the learned Judicial Magistrate is directed to dispose of the same immediately on the same day without fail.

sd/-

02/11/2021

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/ /2021

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE JUDICIAL MAGISTRATE (FAST TRACK), UTHAMAPALAYAM

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.

copy to:

THE OFFICER INCHARGE,

MS CHELLAMUTHU TRUST AND RESEARCH FOUNDATION,
643, K.K.NAGAR, MADURAI - 625 020.

ORDER IN

CRL MP(MD) No.8988 of 2021

IN CRL RC(MD) No.220 of 2021

Date :02/11/2021

SMN2

<https://hdservices.mca.gov.in/hdservices1.2021/3P.4C>