



Crl.O.P.(MD) No.20945 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.20945 of 2022

and

Crl.M.P(MD) No.14603 of 2022

V.S.R. Prabhu

...Petitioner

vs

Paramasivan

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records and set aside the return docket order passed by the Fast Track Court(Magisterial level), Thoothukudi in unnumbered Cr.M.P.No.... of 2022 in C.C. No.151 of 2012 dated 17.11.2022 and direct the Fast Track Court(Magisterial Level) Thoothukudi to take on file the unnumbered Crl.M.P.No.... of 2022 in C.C. No.151 of 2012.

For Petitioner : Mr.A.Robinson

ORDER

This Criminal Original Petition had been filed to call for the records and set aside the return docket order passed by the Fast Track



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Court(Magisterial level), Thoothukudi in unnumbered Cr.M.P.No.... of 2022 in C.C. No.151 of 2012 dated 17.11.2022 and direct the Fast Track Court(Magisterial Level),Thoothukudi, to take on file the unnumbered CrI.M.P.No.... of 2022 in C.C. No.151 of 2012.

2. The learned Counsel for the Petitioner would submit that the Petitioner is the accused in C.C. No.151 of 2012 on the file of the learned Judicial Magistrate, Fast Track Court(Magisterial level) Thoothukudi. It is the contention of the learned Counsel for the Petitioner that he was issued with cheques from the Tamil Nadu Mercantile Bank bearing Nos.047460 and 047461 in the year 2003. That cheque was presented by the Respondent belatedly after four years and it was dishonored. It is the submission of the learned Counsel for the Petitioner that the cheque issued by the Tamil Nadu Mercantile Bank bearing S.No.0474 had been exhausted. Subsequently, he was issued cheque No.73201 and after exhausting the cheques, he was issued with cheque Nos.69151, only at that stage, cheque in the complaint had been presented. Through the Bank Manager of Tamil Nadu Mercantile Bank the statement of accounts of the Petitioner's bank account with the Tamil Nadu Mercantile Bank had been marked. Accordingly, the Bank



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Manager also deposed as D.W.1 and marked the statement of accounts of the Petitioner's bank account regarding cheque transactions in the cheque bearing No.047460 up to end and with number 73201, later 69151. Thereafter, after recording evidence, the case was posted for arguments. The Respondent/Complainant objected to the marking of the statement of the accounts of the Petitioner/accused stating that as per the Section 2 A of the Bankers Book Evidence Act,1981, the statement of account marked in the course of evidence of D.W.1 does not contain the mandatory certificate issued by the Manager of Tamil Nadu Mercantile Bank. Therefore, at that, stage he had filed petition to recall the Bank Manager for marking certificate that was already on record. The petition filed by the Petitioner under Section 311 of Cr.P.C was originally numbered as Cr.M.P No.3742 on 17.11.2022 and later, it was struck off by the learned Judicial Magistrate and on the same day, the petition was also rejected without numbering. He would further submit that the case is posted for arguments and there is a likelihood of pronouncing judgments in a day or two. Therefore, he requested this Court to set aside the order passed by the learned Magistrate and requested this Court to take up the case before lunch.



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3. The learned Counsel for the Petitioner was heard. On perusal of the typed set, what had been stated by the learned Counsel for the Petitioner is found acceptable. Hearing the Respondent is dispensed with since the subject matter is between the Petitioner and the Court. Therefore, the order of the learned Judicial Magistrate, Fast Track Court(Magisterial level) Thoothukudi in rejecting the petition filed by the Petitioner with the seal of the Court dated 14.11.2022 bearing Cheque No.5705 and it was originally numbered as 3742/2022 and it was strike off in the register rejected on 17.11.2022, is set aside.

4. The request of the learned Counsel for the Petitioner/accused to recall the Bank Manager/Tamil Nadu Mercantile Bank for mandatory certificate to be issued to the Bank statement has to be considered or otherwise it will cause miscarriage to the justice.

5. In the light of the above, the learned Judicial Magistrate, Fast Track Court(Magisterial level) Thoothukudi, is directed to afford opportunity in the light of the valuable right of the accused for fair trial and summon the Bank Manager, Tamil Nadu Mercantile Bank, Thoothukudi for



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the mandatory certificate to be affixed on the statement which was recorded by the Court as defence side document.

6. With the above direction, the Criminal Original Petition stands allowed. Consequently connected miscellaneous petition is closed.

28.11.2022

Internet: Yes./No

Index: Yes/no

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Note:

1. Issue order copy on 28.11.2022
2. Registry is directed to return the original petition to the learned Counsel for the Petitioner after substituting it with xerox copies.

To

The Judicial Magistrate,
Fast Track Court(Magisterial level),
Thoothukudi



WEB COPY



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SATHI KUMAR SUKUMARA KURUP, J.

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