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Crl.O.P.No12371 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07-08-2023**

CORAM

HONOURABLE MR JUSTICE V.SIVAGNANAM

CRL OP. 12371 of 2021

and

Crl. M.P. Nos. 6916 & 6917 of 2021 & 10892 of 2023

1.Auto Electrical Sangam,
Rep. by its Managing Partner,
P. Natesan.

2.P.Natesan

... Petitioners

Vs

Classic Batteries & More
Rep. by its Partner,
B.Sengottuvelu,
No.13/1, Thiru.Vee.Ka.Road,
Erode 638004

...Respondent

Prayer: Criminal Original Petition filed under section 482 of Cr.P.C., to set aside the order dated 17.09.2020 passed in S.T.C. No.593 of 2016 on the file of Judicial Magistrate (Fast Track Court No.II), Erode.

For petitioners : Mr.N.Palanikumar for
Mr.S.Kaithamalai Kumaran

For Respondent : No Appearance



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ORDER

This Criminal Original Petition is filed to set aside the order dated 17.09.2020 passed in S.T.C. No.593 of 2016 on the file of Judicial Magistrate (Fast Track Court No.II), Erode.

2. The learned counsel appearing for the petitioners submitted that the petitioners are accused A1 and A2 in STC.No.593 of 2018 on the file of learned Judicial Magistrate, Fast Track Court, Erode. The complainant/respondent filed a complaint against the petitioners along with another accused A3 for the offences under sections 138, 141 r/w.142 of Negotiable Instruments Act alleging dishonour of cheque. The learned judge, by passing the impugned order, split up the accused No.3 from the main case viz., STC.No.593 of 2018 and has assigned a new STC number and proceeded with the case. He further submitted that on receiving summons from the court, the petitioners and A4 appeared before the Court regularly from 2016, but till date, A3 has not at all been served with summons and no non bailable warrant has been issued against the 3rd respondent. He further contended that before splitting up the case as against A3, the learned trial judge failed to follow the procedures as contemplated under section 82 of Cr.P.C. Thus he prayed for setting aside the impugned order.



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3. Heard the learned counsel appearing for the petitioners and perused the materials available on record.

4. On perusal of records, the fact reveals that the petitioners are A1 and A2 in STC.No.593 of 2016 on the file of Judicial Magistrate (Fast Track Court II), Erode. The respondent/complainant filed a complaint against the petitioners/A1 and A2 along with A3 and A4 for the offence under sections 138, 141 r/w.142 of the Negotiable Instruments Act. Further, on perusal of the impugned order, it is noticed that the trial court sent summons to A3 and the same could not be served on him from the date of inception of the complaint and it is further noticed that only A1, A2 and A4 alone have appeared before the trial court. Since the case is pending from the year 2016 without any progress, the learned trial Judge, by following the guidelines of this Court in the case of **H.Aarun Basha Vs. State**, split up the case as against A3 and proceeded with the trial as against the appeared accused persons viz., A1, A2 and A4. The reason assigned in the impugned order by the trial court reads as follows;

“On perusal of notes paper, this Court finds that summons to A3 could not be served from the date of inception of complaint and A1, A2, A4 are appearing. Due to the same, the case is pending from 2016 without any progress. Hence, this Court is satisfied that A3 is hiding himself and summons could not be served upon him within



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a reasonable possible time. Hence, as per the guidelines of Hon'ble High Court of Madras laid down in H.Aarun Basha Vs. State, it is just and proper to split up the case against A3 and to proceed this complaint against A1, A2 and A4 alone. Hence split up of this case against A3 is ordered. M.C. Is directed to split up the case against A3 and assign new STC Number to the split up case against A3. For appearance of A1, A2 and A4 and for copies by 05.10.2020."

5. It is seen that the case is pending from the year 2016 without any progress. Therefore, the learned trial Judge, in order to proceed with the trial further, split up the case as against A3 as per the guidelines stipulated by this Court in the case of **H.Aarun Basha Vs. State** and proceeded with the same as against the appeared accused persons. Hence, I find no fault on the learned trial Judge in splitting up the case as against A3 in order to proceed with the the case as against the appeared accused viz., petitioners and A4. In view of the above, I find no merits in this criminal original petition and accordingly, the same is hereby dismissed. Consequently, the connected miscellaneous petition is closed.

07.08.2023

Index: Yes/No

Internet: Yes

msr

To

The Judicial Magistrate, (Fast Track Court No.II)



Erode.

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V. SIVAGNANAM, J.

msr



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