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Crl.O.P.(MD)No.17264 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.09.2023**

CORAM:

THE HONOURABLE DR.JUSTICE **D.NAGARJUN**

Crl.O.P.(MD) No.17264 of 2023

K.Gautam Ballal

... Petitioner

Vs.

T.Raja Thangaiah

..Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to set aside the impugned docket order dated 06.03.2023 made in CrI.M.P.SR.No.1179 of 2023 in S.T.C.No.18 of 2022 on the file of the Judicial Magistrate Court No.III at Tirunelveli and issue direction to the Judicial Magistrate Court No.III, Tirunelveli, to take the perjury petition in CrI.M.P.S.R.No.1179 of 2023 filed by the petitioner and proceed in accordance with law.

For Petitioner : Mr.S.Kanmani Anamalai

ORDER

This Criminal Original Petition is filed questioning the returned endorsement of the learned Magistrate as per the docket order, dated 06.03.2023 in CrI.M.P.SR.No.1179 of 2023 in S.T.C.No.18 of 2022, wherein, the learned Magistrate has returned as under:



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“On perusal records, it is found that the proceedings in the file of N.I. Court is quashed. Hon’ble High Court when any proceedings is quashed by High Court, all the file is quashed in case record. Hence, on the file which is quashed, no file can be taken into consideration, so when a file is not taken into consideration no action can be taken on the document which does not amount to consideration. Hence no action can be taken. For reasons the petition is returned.”

2. Though the returned endorsement of the learned Magistrate is not clear, it appears that the learned Magistrate is of the opinion that since the complaint under Section 138 of the Negotiable Instruments Act, 1881, has already been quashed, no part of the record in respect of the complaint can be used to initiate other proceedings.

3. The petitioner is Accused No.1 in S.T.C.No.18 of 2022 on the file of the Judicial Magistrate Court No.III, Tirunelveli, filed by the respondent / complainant. The petitioner has challenged the same on the file of this Court in Crl.O.P.(MD).No.13692 of 2022, ultimately, the said Criminal Original Petition was allowed and S.T.C.No.18 of 2022 was quashed by holding that the respondent / complainant has given a false affidavit in the trial Court. Basing on the said observation of this Court,



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the petitioner intended to initiate action under Section 340 (i) of Cr.P.C., for which, he moved an application in CrI.M.P.SR.No.1179 of 2023 in S.T.C.No.18 of 2022. The observations of the learned Magistrate that since S.T.C.No.18 of 2022 on the file of the Judicial Magistrate Court No.III, Tirunelveli, itself, is quashed by this Court, further action can be taken basing on such petition is erroneous. However, the petitioner instead of representing by replying to the returned endorsement suitably has directly approached this Court under 482 of Cr.P.C.

4. In view of the above, this criminal original petition is disposed of, giving liberty to the petitioner to resubmit CrI.M.P.SR.No. 1179 of 2023 in S.T.C.No.18 of 2022 by replying the returned endorsement within a period of two weeks from the date of receipt of a copy of this order. On such re-submission, the learned Magistrate is directed to consider the re-submission and if necessary by hearing learned counsel for the petitioner and pass appropriate speaking orders as quickly as possible.

26.09.2023

NCC: Yes/No

Index : Yes/No

Internet : Yes/No

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Note : 1. Registry is directed to return the original petition on substitute the same with the photo copies.

2. Issue Order Copy by **27.09.2023**



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CrI.O.P.(MD)No.17264 of 2023

DR.D.NAGARJUN. J.

tsg

To

1.The Judicial Magistrate Court No.III at Tirunelveli.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI.O.P.(MD)No.17264 of 2023

26.09.2023