



Crl.A.Nos.339 and 340 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.Nos.339 and 340 of 2024

P.Loganathan ... Appellant in Crl.A.No.339/2024

P.Shanthi Bai ... Appellant in Crl.A.No.340/2024

Versus

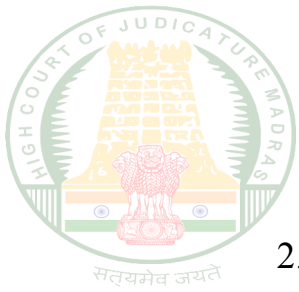
D.Dinakaran ... Respondent in both Crl.As.

PRAYER: Criminal Appeals filed under Section 378 of Code of Criminal Procedure to set aside the order dated 19.10.2022 in C.C.Nos.2388 and 2389 of 2015, respectively passed by the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore @ Allikulam, Chennai.

For Petitioner : Mr.M.Kempraj

JUDGMENT

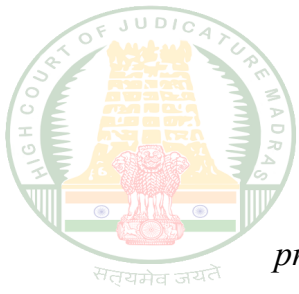
These Criminal Appeals have been filed to set aside the order dated 19.10.2022 passed in C.C.Nos.2388 and 2389 of 2015, respectively, by the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore @ Allikulam, Chennai.



2.This Court, by order dated 12.03.2024 in Crl.O.P.Nos.12361 and 12362 of 2023 granted leave and had given reasons for the same, which reads as follows:

“The petitioners as complainant had filed a private complaint under Section 138 of the Negotiable Instruments Act, which is pending trial in C.C.Nos.2388 and 2389 of 2015, respectively. The respondent/accused though participated in the trial initially, thereafter from 11.09.2018 and 27.08.2018, respectively, failed to appear before the trial court. Thereafter, NBW issued and finding that the petitioners not taken effective steps to execute NBW, further the petitioners/complainant was absent on 19.10.2022, no condonation petition also filed. Finding that the petitioners have not taken any steps for payment of process batta, the trial Court dismissed the complaint under Section 204 (4) r/w 256 Cr.P.C.

2.This Court, directed the petitioners to take private notice to the respondent, which has been returned for the reason 'No such person'. The contention of the petitioners is that after issuance of NBW in the year 2018, the petitioners had been regularly taking steps for executing NBW, even the petitioners approached the jurisdictional police to execute the Non Bailable Warrant. The respondent made himself not available. The respondent is due to the petitioners a huge sum of money and in discharge of the said liability, he issued the cheque. If the complaint is dismissed on technical reasons, the petitioners would be denied of justice. He further submitted that on the



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previous hearings the petitioners/complainant were present except on 19.10.2022.

3.Finding reason and force in the submission of the learned counsel for petitioners, this Court is inclined to grant leave. Accordingly, leave is granted.”

3.This Court finds that the reason given by the petitioners is reasonable and also Non Bailable Warrant is pending against the respondent from the year 2018. The respondent/accused not appeared before the trial Court and the case was dismissed for non payment of process batta. In view of the same, this Court finds that notice to the respondent is not required. Accordingly, notice to the respondent is dispensed with.

4.It is seen that the complaint was dismissed on technical ground for non payment of process batta and not on merits. The substantial justice would be rendered to the petitioners only after full-fledged trial and not by short circuiting of dismissal of the complaint for non payment of process batta.

5.In view of the above, the impugned order dated 19.10.2022 passed in C.C.Nos.2388 and 2389 of 2015, respectively, by the learned Metropolitan



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Magistrate, Fast Track Court No.I, Egmore @ Allikulam, Chennai are set aside and the complaints in C.C.Nos.2388 and 2389 of 2015 are restored on the file of learned Metropolitan Magistrate, Fast Track Court No.I, Egmore @ Allikulam, Chennai. Accordingly, the Criminal Appeals are allowed.

6.The petitioners shall take effective steps to execute the Non Bailable Warrant against the respondent by approaching jurisdictional police and superior police officers.

12.03.2024

Index : Yes/No
Internet : Yes/No
Speaking order/Non speaking order
Neutral Citation: Yes/No
rsi

To

The Metropolitan Magistrate,
Fast Track Court No.I,
Egmore @ Allikulam, Chennai.



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M.NIRMAL KUMAR, J.

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