



CrI.O.P.No.13015 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

CrI.O.P.No.13015 of 2024

in

CrI.A.SR.No.56397 of 2023

B.Maheswaran

Represented by his Power of Attorney Agent

A.M.S.Ravichandran

... Petitioner

Vs.

K.Gunasekaran

... Respondent

Prayer in CrI.O.P.No.13015 of 2024 : Criminal Original Petition filed u/s.378(4) of the Code of Criminal Procedure, seeking to grant leave to the petitioner to file the present appeal against the order dated 16.09.2021 in S.T.C.No.805 of 2016 passed by the Judicial Magistrate, Thiruvotriyur.

Prayer in CrI.A.SR.No.56397 of 2023 : Criminal Appeal filed under Section 378 of the Code of Criminal Procedure Code, to set aside the orders passed against the appellant/complainant dated 16.09.2021 in S.T.C.No.805 of 2016 by the Judicial Magistrate, Thiruvotriyur and restore the case on file permit the appellant/complainant to conduct the proceedings of the case.

For Petitioner : Mr.M.Gnanasekar

For Respondent : Mr.A.M.Ravichandran



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ORDER

WEB COPY This Criminal Original Petition has been filed seeking to grant leave to the petitioner to file an appeal against the impugned order passed by the learned Judicial Magistrate, Thiruvotriyur in S.T.C.No.805 of 2016 dated 16.09.2021.

2. The case of the petitioner is that, the respondent/accused had borrowed a sum of Rs.5,00,000/- from the petitioner/complainant for his family expenses and executed a promissory note. After repeated request, the respondent issued a cheque bearing No.022032 dated 06.12.2010 drawn on the Arkonam Co-op Urban Bank Limited, Palanipet Branch, Arkonam, N.A.A. District for a sum of Rs.5,00,000/-. As per the instructions of the respondent, the petitioner presented the said cheque for collection on 26.12.2010 for encashment and the said cheque was returned dishonoured with an endorsement "Account Closed" vide memo dated 27.12.2010 vide return memo dated 27.12.2010. Thereafter, the petitioner issued a legal notice to the respondent on 05.01.2011 calling upon the respondent to pay the amount within 15 days from the receipt of the notice. Though the respondent received the notice on 07.01.2011, the respondent did not come forward to repay the amount borrowed from the petitioner. Therefore, a complaint was filed by the petitioner as against the respondent for an offence u/s 138 of the Negotiable Instruments



Act, 1881 (in short 'the N.I. Act') before the trial court in S.T.C.No.805 of 2016.

However, for non-appearance of the petitioner, the Court below had dismissed the said complaint filed by the petitioner. Aggrieved over the same, the petitioner preferred the present petition seeking to grant leave to prefer an appeal against the said judgment dated 16.09.2021 in S.T.C.No.805 of 2016.

3. The learned counsel appearing for the petitioner submitted that the complaint filed by the petitioner was dismissed for non-appearance of the petitioner. Further, he submitted that as soon as the bailable warrant is issued as against the respondent, it is for the law enforcing agency to comply with the execution of warrant, however, shifting the burden as against the petitioner is wholly unsustainable. Accordingly, he prays for allowing the petition.

4. The learned counsel appearing for the respondent fairly submitted that this court may set aside the impugned order and remand the matter to the trial court for fresh consideration and after providing opportunity to the petitioner as well as respondent, the trial court may pass appropriate orders as early as possible. He also submitted that the respondent will co-operate with the trial.



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WEB COPY 5. In view of the above submissions, this court is inclined to dispose of this criminal original petition with the following orders :-

(i) the impugned order dated 16.09.2021 passed in S.T.C.No.805 of 2016 is set aside and the matter is remanded to the trial court for fresh consideration. While reconsidering the same, the trial court is directed to pass appropriate orders after providing opportunity to the petitioner as well as the respondent, as expeditiously as possible;

(ii) the petitioner as well as the respondent are directed to co-operate with the trial.

6. With the above directions, this Criminal Original Petition is disposed of. Consequently, the Criminal Appeal is rejected at the SR stage itself.

14.06.2024

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
sp

To

The Judicial Magistrate, Thiruvotriyur.



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M.DHANDAPANI, J.

sp

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