

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.7.2015

CORAM:

THE HON'BLE MR.JUSTICE B.RAJENDRAN

CrI.R.C. No.726 of 2015 and
M.P.No.1 of 2015

K.K.Velusamy

.. Petitioner/Respondent/Accused

Vs.

M/s. Shri. Hari Krishna Cotton Mills (P) Ltd,
having its office at S.F.No.61C, P.N.Road,
Tirupur

Rep. By its authorised person,
Mr.R.Sathyamoorthy, aged 58 years,
S/o. Rajendran Pillai,
5/375, Ganesa Nagar, Duraisampuram,
Pitchampalayampudur, Tirupur-3.

.. Respondent/Petitioner/Complainant

Petition filed under Section 397 and 401 of the Code of Criminal Procedure, to set aside the order dated 29.04.2015 passed in C.R.P.No.8 of 2014 on the file of Hon'ble 2nd Additional District and Sessions Judge, Tiruppur against C.C.No.283 of 2013 on the file of J.M (FTC) Tiruppur by allowing this revision petition.

For Petitioner : Mr.S.Saravanan

सत्यमेव जयते
O R D E R

Dissatisfied with the order dated 29.04.2015 passed in C.R.P.No.8 of 2014 on the file of 2nd Additional District and Sessions Judge, Tiruppur against C.C.No.283 of 2013 on the file of Judicial Magistrate (FTC) Tiruppur, this revision has been filed by the petitioner/accused.

2. The petitioner herein is the accused and the respondent is the complainant.

3. The respondent herein has filed the Calender Case before the Court below under Section 200 Cr.P.C. read with Sections 138 and 142 of the Negotiable Instrument Act contending that in the course of

business dealing between him and the accused, a sum of Rs.7,86,500/- is due and payable by the petitioner/accused and in order to repay the same, he issued two cheques drawn on State Bank of Patiala, Pudur Pirvu, Dharapuram Road, Tirupur, dated 17.11.2011 for Rs. 4,00,000/- and 3,86,500/-/- and on presentation, the said cheques were returned with an endorsement 'funds insufficient'. Therefore, after issuing the statutory notice on 04.1.2012, the petitioner filed the above Calendar case before the Court below. When the case is posted for hearing, the same was dismissed for non appearance of the complainant, namely, the respondent herein.

4. Aggrieved by the order of the learned Judicial Magistrate FTC, Tiruppur, the respondent herein filed C.R.P.No.8 of 2014 before the learned Additional and District and Sessions Judge, Tiruppur. The learned Sessions Judge taking into consideration of the fact that the complainant was absent only for the last two hearings and the fact that the petitioner suffered from ill health and also the fact that he was not in a position to contact his counsel and know the date of further proceedings, allowed the CRP filed by the respondent/complainant thereby, setting aside the order of the Trial Court with a direction to complete the case within a period of three months. Hence, the petitioner/accused has come forward with this revision.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the materials available on record.

6. On a perusal of the order passed by the trial court, it could be seen that though the respondent/complainant appeared before the trial Court on several days, since he could not appear before the court on the date of judgement due to unavoidable circumstances, the trial court dismissed the complaint for non prosecution, which is not permissible in law and that too, without giving an opportunity to the petitioner to put-forth his case. Hence, the respondent/complainant filed C.R.P.No.8 of 2014 before the learned Additional and District and Sessions Judge, Tiruppur. The learned Sessions Judge after considering the submissions on either side, has allowed the appeal filed by the respondent/complainant. Against the order of the Appellate Court in allowing the petition, this revision is filed.

7. As per the judgement of the Hon'ble Apex Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka], there cannot be a summary disposal even after a party has not appeared before the Trial Court. The Court is empowered to deal with the matter on merits and dispose of the same and not on the ground of non prosecution.

8. But in the case on hand, the trial Court, without going into the merits of the case, has dismissed the petition only on the ground of non appearance of the complainant/respondent, which is

contrary to the proposition laid down by the Hon`ble Supreme Court in the case cited supra.

9. Hence this, criminal revision case is dismissed. The order passed by the 2nd Additional District and Sessions Judge, Tiruppur is confirmed. However, taking note of the fact that the time granted by the lower Appellate Court to complete the trial proceedings in C.C.No.283 of 2013 has already lapsed, the learned Judicial Magistrate FTC, Tiruppur, shall take the calendar case on file and dispose of the same at the earliest on merits and in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The 2nd Additional District and Sessions Judge, Tiruppur.

2. The Judicial Magistrate (FTC), Tiruppur.

1 cc to Mr.S.Saravanan , Advocate Sr.No.37268

sr(co)
pmk.5,8,2015

Cr1.R.C. No.726 of 2015

सत्यमेव जयते

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