

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.7.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.771 of 2015

M/s. Maftec Filtration Industries

Rep. by Mr.Kannan

No.6, (Old No.5A), Nethaji Road

Ganesh Nagar, Adambakkam,

Chennai - 600 088

... Petitioner

v.

1. M/s. A.B.C.Engineers

A partnership Firm

Rep. by its Partner Mr.Ravi Shankar

Mr.Jenny, No.36, Velacherry Road

Little Mount, Saidapet, Chennai - 15

2. Mr.Ravi Shankar

Partner M/s.A.B.C. Engineers

No.4/3, Swaminatha Nagar

1st Main Road, Kottiwakkam,

Chennai - 600 041

3. M. Jenny

... Respondents

Revision Petition filed under Sections 397 read with Sec. 401 of Cr.P.C. against the order dated 01.11.2011 in C.C.No.6141 of 2007 passed by the learned VII Metropolitan Magistrate at George Town, Chennai.

For Petitioner : Mr.R.Bharathkumar

For Respondent -2 : Mr. M.Mohideen Pitchai

ORDER

This revision is filed as against the dismissal of the complaint dated 01.1.2011.

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

3. The petitioner herein has filed the Calendar Case before the Court below under Section 200 Cr.P.C. read with Section 138 of the Negotiable Instrument Act contending that in the course of business transaction between him and the accused, a sum of Rs.2,15,157/- is

due and payable by the accused and in order to repay the same, he issued three post dated cheques drawn on Indian Bank, Alwarpet, Chennai - 18 for the said amount and on presentation, the said cheques were returned with an endorsement 'insufficient funds'. Therefore, after issuing the statutory notice on 03.10.2006, the petitioner filed the above Calendar case before the Court below. When the case is posted for cross examination of P.W.1, the same was dismissed for non appearance of the complainant, namely, the petitioner herein. Therefore, the petitioner has come forward with this revision.

4. According to the petitioner, originally the complaint came up for hearing on 30.5.2011 and the same was adjourned to 11.11.2011 and when the counsel attended the Court on 11.11.2011, the case was not called. On enquiry, it was revealed that the bundle could not be traced by the staff. During the month of 2012, it was brought to the notice that the complaint was dismissed on 01.11.2011 for not taking steps to serve summons. According to the petitioner, the accused with an intention to cheat the accused have shifted their office and he came to know the address of the new office recently.

5. The learned counsel for the petitioner submitted that the Court below, without giving an opportunity to the petitioner, has dismissed the complaint for non-prosecution by order dated 01.11.2011, which is per se illegal and contrary to the judgment of the Hon'ble Supreme Court.

6. The learned counsel for the respondent submitted that since the petitioner failed to take process, the Court below has rightly dismissed the complaint and, therefore, the revision has to be dismissed.

7. I have perused the materials available on record.

8. On a perusal of the order passed by the court below it could be seen that though the petitioner-complainant appeared before the court below on earlier occasions, since he could not appear before the court on 01.11.2011, 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.

9. As per the judgment of the Hon'ble Apex Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka], if the petitioner do not appear, there is no necessity for the Court, which is hearing the matter, to issue warrant for special notice or appoint any Amicus Curiae to argue the matter on behalf of the petitioner. The Court is empowered to deal with the matter on merits and dispose of the same and not on the ground of non prosecution.

10. But in the case on hand, the Court below, without going into the merits of the case, has dismissed the petition only on the ground of non appearance of the complainant/ petitioner, which is contrary to the proposition laid down by the Hon`ble Supreme Court in the case cited supra. But at the same time, the petitioner has not even paid court fee. In view of his lethargic attitude with regard to the payment of court fee, I am of the view that this petition is liable to be allowed on payment of costs.

11. Accordingly, the order passed by the learned VII Metropolitan Magistrate, George Town, Chennai in C.C.No.6141 of 2007 is set aside on payment of Rs.3,000/- (Rupees three thousand only) by the petitioner to the learned counsel for the respondent, within a period of one week from the date of receipt of a copy of this order and the matter is remitted back to the court below for fresh consideration. The learned VII Metropolitan Magistrate, George Town, Chennai shall decide the matter afresh, after providing opportunities to both the parties and dispose of the same on merits and in accordance with law.

ga

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1.The VII Metropolitan Magistrate,
George Town, Chennai

2.The Public Prosecutor,
High Court, Madras

+ 1 cc to Mr.M.Mohideen Pitchai, Advocate SR 38751

+ 1 cc to Mr.R.Bharath Kumar, Advocate SR 38842

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