

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-08-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 245 of 2009

Pavan Bai

.. Petitioner

Versus

R.Rajaram
Proprietor
Vasanth Bhavan
No.9, Third Cross Street
Karpagam Garden
Adyar, Chennai-600 020
& No.46
Bharathi Street
Triplicane
Chennai-5.

.. Respondent

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order dated 29.10.2008 passed in S.T.C.No.2461 of 2007 on the file of the XI Judge/Special Metropolitan Magistrate, Court of Small Causes, Chennai.

For Petitioner : No Appearance

For Respondent : Mr.M.Purushothaman

ORDER

This Criminal Revision Case is filed by the complainant against the order dated 29.10.2008 passed in S.T.C.No.2461 of 2007 on the file of the XI Judge/ Special Metropolitan Magistrate, Court of Small Causes, Chennai, dismissing the complaint for non-appearance of the complainant and for non-payment of process fees.

2. By the order dated 29.10.2008, the Trial Court by invoking the powers vested with it under Section 204 (4) of Cr.P.C. dismissed the complaint filed by the petitioner on the ground that he has not paid the process fee in time and he has not taken any steps to cause service of summons to the respondent/ accused.

3. Today, though, the matter is listed under the caption "for dismissal", when the matter is taken up, there is no representation for the petitioner/ complainant. The Hon'ble Apex Court in the decision reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, has culled out certain principles and in paragraph No.19 has held as follows:-

"19. From the aforesaid decision in Bani Singh vs. State of Uttar Pradesh, reported in (1996) 4 SCC 720, the principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

In the light of the principles culled out in the judgment of the Hon'ble Apex Court cited supra, it is crystal clear that no doubt, the Court can decide the matter even in the absence of petitioner or his counsel, but, only criteria is that the case should be decided on merits in the absence of the petitioner and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining the case on merits. In the light of the decision cited supra, the main Criminal Revision Case itself is taken up and disposed of on merits, after hearing the learned counsel appearing for the respondent/accused and also after perusing the materials available on record.

4. I have perused the materials available on record. The petitioner has filed the complaint to launch prosecution against the respondent/accused for having committed the offence under Section 138 of Negotiable Instruments Act. The complaint was filed by the petitioner on 16.08.2005 and it was numbered as S.T.C. No. 2461 of 2007. On presentation of the complaint, the Court below ordered to issue summons to the respondent. On 16.08.2005, when the case was called, the Trial Court found that inspite of time granted to the petitioner, the petitioner/complainant has not chosen to appear before the Trial Court and he has not paid the process fee and he has not taken any steps to cause service of summons on the respondent and therefore the Court below has dismissed the complaint for non-payment of process fee by invoking the powers vested with it under Section 204 (4) of Cr.P.C. I find that there is nothing wrong in the impugned order dated 29.10.2008. The order

passed by the Trial Court stands confirmed. This Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar

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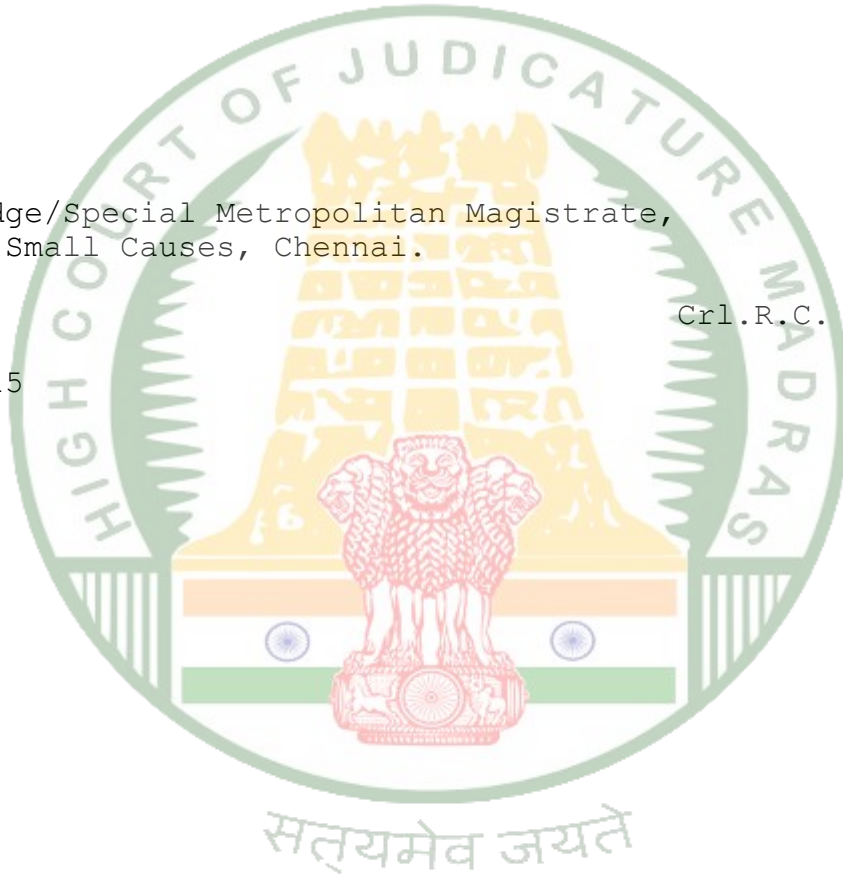
Sub Assistant Registrar

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To
The XI Judge/Special Metropolitan Magistrate,
Court of Small Causes, Chennai.

Crl.R.C. No. 245 of 2009

MP(CO)
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