

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-08-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1293 of 2012

N.Thangaraj

.. Petitioner

Versus

1.M/s.Thula Tex
8/1813, A.Ponnammal Nagar
Pandyar Nagar
P.N.Road, Tiruppur.

2.S.Selvakumar
S/o.Saniappan
Partner of Thula Tex
8/1813, A.Ponnammal Nagar
Pandyar Nagar, P.N.Road
Tiruppur.

3.K.S.Gopal
S/o.Saniappan
Partner of Thula Tex
8/1813, A.Ponnammal Nagar
Pandyar Nagar
P.N.Road
Tiruppur.

.. Respondents

Criminal Revision Case filed under Section 397 read with Section 401 of Cr.P.C. against the order dated 15.02.2012 passed in S.T.C.No.450 of 2010 on the file of the Judicial Magistrate No.I, Tiruppur.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : No Appearance

ORDER

This Criminal Revision Case is filed by the complainant against the order dated 15.02.2012 passed in S.T.C.No.450 of 2010 on the file of the Judicial Magistrate No.I, Tiruppur, dismissing the complaint under Section 204(4) Cr.P.C., for non-payment of process fee.

2. By the order dated 15.02.2012, the Trial Court dismissed the complaint filed by the petitioner by invoking the powers vested with it under Section 204 (4) of Cr.P.C. on the ground that the petitioner

has not paid the process fee in time to cause service of summon to the respondents/accused.

3. Today, the matter has been posted under the caption "for orders". The learned counsel appearing for the petitioner is present, but, there is no representation for the respondents and hence, the matter is taken up and disposed of finally after hearing the learned counsel for the petitioner.

3. The main ground of attack made by Mr.K.Govi Ganesan, learned counsel for the petitioner is that infact the process fee was ready and for payment of the same, a junior lawyer was deputed and he could not reach the Court in time and pay the same, due to the traffic jam, in the mean while, the Trial Court has passed the order dismissing the very complaint itself on the ground of non-payment of process fee. He would further contend that the Trial Court ought not to have dismissed the complaint on technicalities without affording an opportunity to the petitioner to adjudicate the complaint on merits. Therefore, according to the learned counsel for the petitioner, the Trial Court has not given sufficient or reasonable opportunity to the petitioner to prosecute the complaint and therefore the order passed by the Trial Court is liable to be interfered with. In support of his contention, the learned counsel for the petitioner relied on the decisions of this Court reported in (Income Tax Officer vs. Vino Kumar Didwania) 1992 (198) ITR Madras 750 and (Elumalai vs. K. Sukumar) 1996 (II) CTC 555 to contend that sufficient opportunity was not given to the petitioner to prosecute the complaint and the dismissal of the complaint on technicalities is unsustainable under law.

4. I heard the learned counsel for the petitioner and perused the materials placed on record. The petitioner has filed the complaint to launch prosecution against the respondents/accused for having committed the offence under Section 138 of Negotiable Instruments Act. The complaint was filed by the petitioner on 25.11.2009 and it was numbered as S.T.C. No. 450 of 2010. On presentation of the complaint, the Trial Court ordered to issue summons to the respondents. On 15.02.2012, when the case was taken on file, the Court below found that inspite of time granted to the petitioner, he has not paid the process fee and he has not taken any steps to cause service of summons on the respondents and therefore the Trial Court has dismissed the complaint for improper payment of process fee. According to the petitioner, the process fee was ready and for payment of the same, a junior lawyer was deputed and he could not reach the Court in time and pay the same, due to the traffic jam, in the mean while, the Trial Court has passed the order dismissing the very complaint itself on the ground of non-payment of process fee. In my considered opinion, the Trial Court ought to have afforded sufficient opportunity to the petitioner to pay the process fee in the interest of justice. Denying such opportunity to the petitioner is violative of principles of natural justice. The court below hastily dismissed the complaint filed by the petitioner which is not warranted in the facts and circumstance of the case.

5. In the decision relied on by the counsel for the petitioner, which is reported in (Elumalai vs. K. Sukumar) 1996 (II) CTC 555 it was held by this Court that sufficient opportunity was not given to the petitioner to pay process fees and accordingly, this Court remanded the matter back to the Court below for disposal of the complaint on merits. In para No.4 of the decision, it was held as follows:-

"4. Mr. Kumar, appearing for the petitioner contends the very fact that on 02.04.1993 and on 19.04.1993, the complainant took steps and paid process fee promptly would reveal that he was vigilant in taking steps for sending the summons to the accused. Even on 30.04.1993, he obtained the permission from the Court to take private notice to the accused and sent the same. So, on the basis of this he contends that he did not pay process fees only on 30.04.1993 under the impression he has been permitted to take private notice, which has been done in this case promptly by the petitioner.

I feel the order passed by the lower court is to be set aside on the simple ground.

The impugned order does not show any valid reason for dismissing the complaint it is merely stated

"எதிரியை ஆஜர்படுத்த போதிய அவகாசம் கொடுத்தும் வாதி தரப்பில் கட்டளை மனு செலுத்தவில்லை.

This reason may not be a valid reason; more so, it is also not factually correct, according to the records. As per the submissions made by the counsel Mr. Kumar, already process fees paid for the summons issued on 02.04.1993 and 19.04.1993. So the Magistrate ought to have given one more opportunity on 13.05.1993 to enable the petitioner to pay process fees, especially private notice was already sent. Since sufficient opportunity has not been given, I feel the order suffers from illegality and the same is liable to be set aside. Accordingly, the order is set aside and I remand the matter to the trial court to give opportunity to the petitioner to pay process fees and then issue process to the accused and go on with the proceedings and dispose of the same as expeditiously as possible. With these observations, the revision is allowed."

6. In the light of the above decision rendered by this Court and on consideration of the facts and circumstance of the present case, I hold that the Court below is not justified in dismissing the complaint filed by the petitioner on technicalities namely for non-payment of proper process fee and instead the Court below ought to have afforded an opportunity to the petitioner to pay the proper process fee. Therefore, I set aside the order dated 15.02.2012 made

in S.T.C. No. 450 of 2010 on the file of the Judicial Magistrate No.I, Tiruppur and remand the matter to the Trial Court, which shall restore the S.T.C.No.450 of 2010 on its file and shall afford an opportunity to the petitioner to pay proper process fee, issue summons to the accused and proceed with the complaint on merits and in accordance with law. Accordingly, this Criminal Revision Case is allowed, however, the petitioner/complainant is directed to pay a costs of Rs.5,000/- (Rupees Five Thousand only) to the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras, within a period of three weeks from the date of receipt of a copy of this order, failing which, the impugned order passed by the Trial Court shall stand revived.

Sd/-
Assistant Registrar(CO)
dt. 21.9.15

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate, Tiruppur.
2. The Judicial Magistrate No.I, Tiruppur.
3. The Public Prosecutor, High Court, Madras.
4. The Tamilnadu Medication and conciliation Center, High Court, Madras.

+1cc to Mr.K. Gowri Ganesan, Advocate, S.R.No.44918

CTK(CO)
EU(23/09/2015)

CrI.R.C. No. 1293 of 2012