

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.271 of 2008
and
M.P. No. 1 of 2008

S.Sathyamoorthy

.. Petitioner

Versus

S.R.Kumarashanmugham

.. Respondent

Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C. to set aside the order dated 19.02.2008 passed in C.M.P.No.1179 of 2008 in C.C.No.320 of 2005 on the file of the learned Judicial Magistrate No.3, Erode.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondent : No appearance

ORDER

The petitioner has come forward with this Criminal Revision Petition as against the dismissal order dated 19.02.2008 passed by the learned Judicial Magistrate No.3, Erode in the application filed under Section 315 of the Criminal Procedure Code for adducing evidence in C.C.No.320 of 2005.

2. The case in brief is as follows:

The respondent herein preferred a private complaint in C.C.No.320 of 2005 on the file of the learned Judicial Magistrate No.3, Erode as against the petitioner herein and two others for the alleged offence under Section 138 of the Negotiable Instruments Act. The petitioner is arrayed as A3. It is alleged that the first accused is a partnership firm and the accused Nos.2 and 3 are its partners. On 02.07.2004, the accused Nos.2 and 3 borrowed a sum of Rs.50,000/- on behalf of Accused No.1 firm towards its business needs and A2 issued a post dated cheque dated 02.07.2005; when it was presented for collection, the same was returned with the endorsement "Account closed". Therefore, the respondent issued a legal notice and since there was no response, the above complaint has been filed.

<https://hcservices.ecourts.gov.in/hcservices/>

3. Learned counsel for the petitioner submitted that though the complaint was filed in the year 2005, summons were served on the

petitioner, who is arrayed as A3 in the case, only on 27.09.2007. PW1 was examined and cross-examined on 08.02.2008; later the case was posted for defence witness on 19.02.2008 and on that date, the petitioner sought for adjournment to examine his witness; however the same was not given and the matter was posted for judgment on 22.02.2008. On the same day, the petitioner/A3 filed two applications, viz., (i) for early hearing and another for letting in evidence mainly on the ground to mark Form A and to prove that he was not a partner in the first accused firm on the crucial date of the issuance of the cheque. But, the said application was dismissed on the same day. Though the application filed for early hearing was allowed, the other application filed under Section 315 of Cr.P.C was dismissed and was posted for judgment on 22.02.2008; but in the interregnum period, this Criminal Revision Case was filed before this Court on 21.02.2008 and stay was obtained. Accordingly, the learned counsel would pray for setting aside the order passed by the court below.

4. Heard the learned counsel for the petitioner.

5. Though Court notice has been served, service is still awaited. However, the private notice ordered has been served on the respondent and his name also printed in the cause list. Even then, none appeared inspite of the fact that the matter is pending before the Court below for the past seven years in view of the pendency of this Criminal revision.

6. It is rather unfortunate that cases are kept pending for several number of years for refusing to give adjournment for one day. Admittedly, the petitioner did not avail the opportunity for defence witness when it was posted on 19.02.2008 and it was his mistake and then it was posted for judgment on 22.02.2008. However, the judgment could not be pronounced in view of the stay order passed by this Court in this Criminal Revision Case.

7. A perusal of the impugned order would show that the same has been passed in a cryptic manner, which is as follows:

"As the case is posted for judgment, the petition is dismissed."

In view of the above, the order passed by the learned Magistrate is liable to be set aside and accordingly, the same is set aside. The matter is remitted back to the Court below with a specific direction that the petitioner shall give evidence on the next hearing date, which may be fixed by the Court below and on such evidence being let in on the side of the petitioner, the Court shall dispose of the main case itself within a period of three months from the date of receipt of a copy of this order.

8. In the result, this Criminal Revision Case is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vj2
To

1. The Judicial Magistrate No.III, Erode
2. The Public Prosecutor, Madras.
- 3.The Chief Judicial Magistrate, Erode.

Copy to :

The Section Officer, Crl.Section, High Court,
Madras

1 cc to Mr.A.K.Kumarasamy ,Advocate, SR.No.19240

Cr1.RC. No.271 of 2008

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pmk.15.4.2015

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