

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

Coram

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

CRL. REVISION CASE No.812 of 2017

S.B.Photo Lab Needs Pvt. Ltd.,
Represented by its Manager,
Mr.G.Venkataraman
New No.19, Burkit Road,
T.Nagar, Chennai-17. ... Petitioner

Mr.Shah
Prop. M/s.Rohit Radiography Services,
B-653, Bhatiya Compound,
Khadarwadi Village, Road,
Udyambag, Belgaum, Karnataka. ... Respondent

Vs.

Prayer: The Criminal Revision Case has been filed under Section 397 read with 401 of the Code of Criminal Procedure praying to call for the records of the learned XVII Metropolitan Magistrate at Saidapet, Chennai-600 015 and set aside the order passed in MP No.930 of 2017.

For Petitioner : Mr.T.Vijaya Raghavan

For Respondent : No appearance

ORDER

This Criminal Revision case has been filed against the order passed by the learned XVII Metropolitan Magistrate at Saidapet, Chennai-600 015, in M.P.No.930 of 2017 dated 27.02.2017.

2. The case of the petitioner is that he filed a complaint under section 200 of Criminal Procedure Code read with section 138 and 142 of the Negotiable Instrument Act.

3. Though the said complaint was filed on 11.08.2016, the same was not taken on file. While being so, on 27.02.2017, when the case was posted, the petitioner could not be present before the court as he met with an accident. However, the learned Magistrate without giving any opportunity, had dismissed the complaint, on the reason, that, there is no representation.

4. The learned counsel would also submit that before passing the order of dismissal for default, no final notice was given to the petitioner.

5. In this regard, the learned counsel would rely upon the judgment of this court reported in 2017-1-Law Weekly(Crl.) 237, in the matter of Saritha Mittal Proprietrix, M/s.Vishnu Idpat Udyog Rep. By Power of Attorney Vs. K.Jayabal.

6. The learned counsel for the petitioner would rely upon the following paragraphs of the said judgment, which reads thus:

"11. Section 256 Cr.P.C. Deals with death and absence of the complainant is not within our hands. But presence and absence are within our hands. Wifull absence cannot be sponsored. But mere absence with acceptable reasons can be countenanced. That is why, Section 256(1) Cr.P.C. On the one hand enables the Court to axe the complaint (Section 256(1) Cr.P.C.) and acquit the accused and on the other hand, it gives discretion to the Court in appropriate cases instead of axing the complainant to give an opportunity to the accused (See Proviso to Section 256(1) Cr.P.C.) This is for bonafide cases. Malafied cases will never be accommodated under Sec.256 Cr.P.C.

15. A close scanning of case records would reveal that there is no material to sustain the premises of the learned Magistrate that a final notice has been served upon the complainant. That apart, in

the facts and circumstances of the case, the learned Magistrate could have given an opportunity to the complainant.

16. In view of the foregoing, it is ordered as under:

- 1. This revision is allowed.*
- 2. The impugned order passed by the learned VII Metropolitan Magistrate, George Town, Chennai in C.C.No.14899 of 2007 on 25.11.2010 is set aside.*
- 3. The learned Magistrate shall restore C.C.No.14899 of 2007 to his file.*
- 4. The learned Magistrate will proceed to try the said case expeditiously and dispose of the same according to law after giving reasonable opportunity to both sides."*

7. By relying upon the said judgment, the learned counsel would submit that, issuing the final notice in appropriate cases is necessary and dismissing the complaint for absence of complainant on a particular date, without such notice, is against the scheme of the Code and therefore he would submit that the impugned order has to be interfered with.

8. Though notice has been served privately to the respondent

and the respondent name is also printed in the cause list with full address, no one represent the respondent.

9. In view of the said submissions made by the learned counsel appearing for the petitioner that no final notice was given to the petitioner and also on the particular date, the petitioner could not be present before the court below because of the accident he met with, this court feels a chance could have been given by the learned Magistrate by sending final notice to the petitioner and inspite of receiving final notice still the petitioner was absent, during the next hearing date, such an order of dismissal could have been passed.

10. However, the learned Magistrate passed a cryptic order of two lines and simply dismissed the case for default. This, in the opinion of this court, may not be justifiable and hence interference on the said impugned order is necessary.

11. In view of the aforesaid facts and circumstances of the case, the impugned order is set aside and the learned magistrate is directed to take the case on file and proceed in accordance with law. With these observations, the Criminal Revision Case is allowed.

28.07.2017

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R.SURESH KUMAR.J

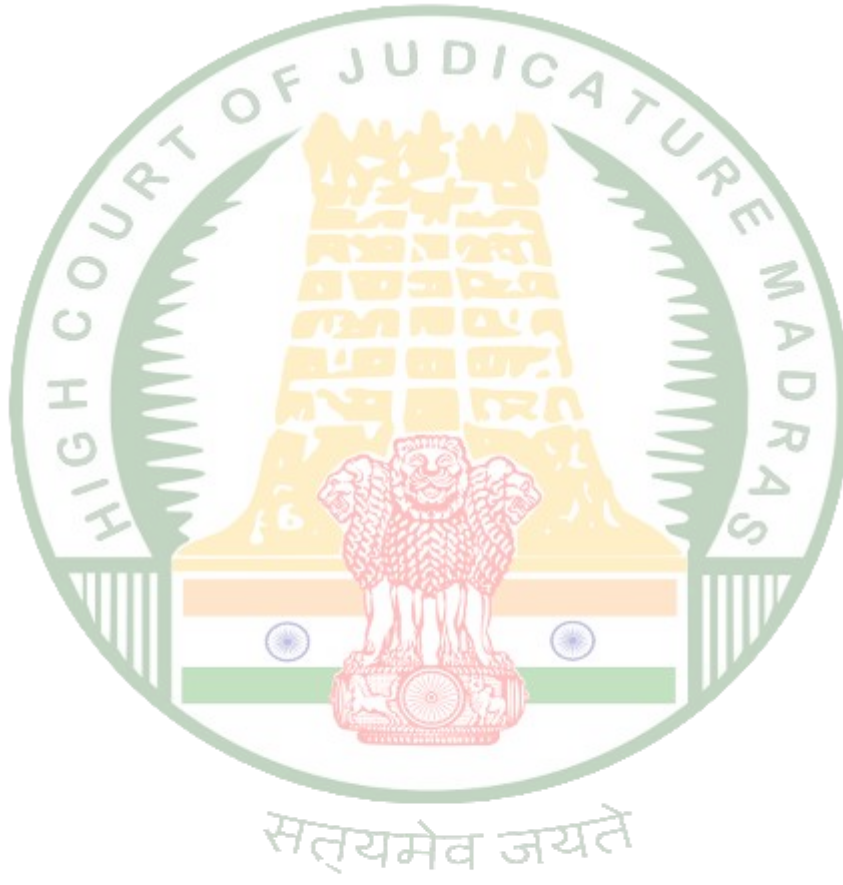
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Index:Yes/No
Internet:Yes/No

To

The learned XVII Metropolitan Magistrate,
Saidapet, Chennai.

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