

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.27335 of 2017
in
Crl.A.No.SR 40075 of 2015

J.Jawaharlal Nehru ...Petitioner/Appellant/Complainant

versus

P.Palaniappan ...Respondent/Accused

Criminal Original Petition filed under Section 378 (4) Criminal Procedure Code to grant Special leave to file an appeal to this Court against the judgment dated 20.04.2015 passed in S.T.C No.509 of 2012 by the learned Judicial Magistrate cum Fast Track Court No.2, Erode.

For Petitioner : Mr.T.R.Sivaram

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This Criminal Original Petition has been filed under Section 378 (4) of the Criminal Procedure Code to grant Special leave to file an appeal against the judgment dated 20.04.2015 in S.T.C No.509 of

2012 passed by the learned Judicial Magistrate cum Fast Track Court No.2, Erode.

2. For the sake of convenience, the petitioner and the respondent will be referred to as the complainant and the accused respectively.

3. It is the case of the complainant that the accused had borrowed Rs.1,35,000 on 13.07.2012, for which, he has issued three cheques totally valued at Rs.1,35,000/-. When the complainant presented the cheques, they were dishonoured. The complainant issued a statutory notice dated 23.08.2012 under Section 138 of the Negotiable Instruments Act, 1881, to the accused. But, the accused did not pay the cheque amounts. Therefore, the complainant initiated a prosecution in S.T.C.No.509 of 2012 against the accused under Section 138, ibid, which was taken on file by the learned Judicial Magistrate, Fast Track Court No.2, Erode.

4. The complainant was examined-in-chief on 05.09.2013. Thereafter, the matter was adjourned on various dates for the appearance of the complainant. But, the complainant was not

regularly appearing before the trial Court. Consequently, the trial Court dismissed the complaint under Section 256 Cr.P.C on 20.04.2015, challenging which, the complainant filed present appeal against the order of acquittal with a delay of 46 days.

5. The condone delay application in CrI.M.P.No.279 of 2016 was not prosecuted before this Court and that was dismissed for default on 22.06.2016. Therefore, the complainant filed CrI.M.P.No.14120 of 2017 for restoration of the condone delay petition and this Court by order dated 15.11.2017, restored the condone delay petition on condition that the complainant shall pay costs of Rs.1,000/- to the Madras High Court Retired Officials Association. Accordingly, the complainant paid the said sum on 21.11.2017. Therefore, the condone the delay petition has been restored and taken on file. Paragraph Nos. 4, 5 and 6 of the affidavit dated 31.08.2015 filed in support of CrI.M.P.No.279 of 2016 read as follows:

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"I state that the case was taken on file in S.T.C No.509 of 2012 on 27.11.2012 and after several adjournments it was finally posted to 18.04.2015 for my further cross-examination.

Owing to my absence on 18.04.2015, the complaint filed by me was dismissed under Section 256 Cr.P.C acquitting the respondent/accused under Section 138 of the Negotiable Instruments Act.

5.I state that I was advised that only a Revision will lie against the above judgment of acquittal. Then only I came to know that only an appeal will lie.

6.I further state that I was in financial strain and tried my best to mobilize funds to engage a counsel to file the appeal. Hence, the delay occurred in filing the appeal."

6. Thus, the complainant was aware of the orders passed by the trial Court calling upon him to appear before the said Court. The reasons given by the complainant in paragraph Nos.5 and 6 of the affidavit are not satisfactory.

7. Accordingly, this Criminal Original Petition stands dismissed, Consequently, connected Criminal Appeal is rejected at the S.R. stage itself.

13.12.2017

Index :Yes/No
Speaking/Non speaking Order

cla

To

1.The Judicial Magistrate-cum-
Fast Track Court No.2,
Erode.

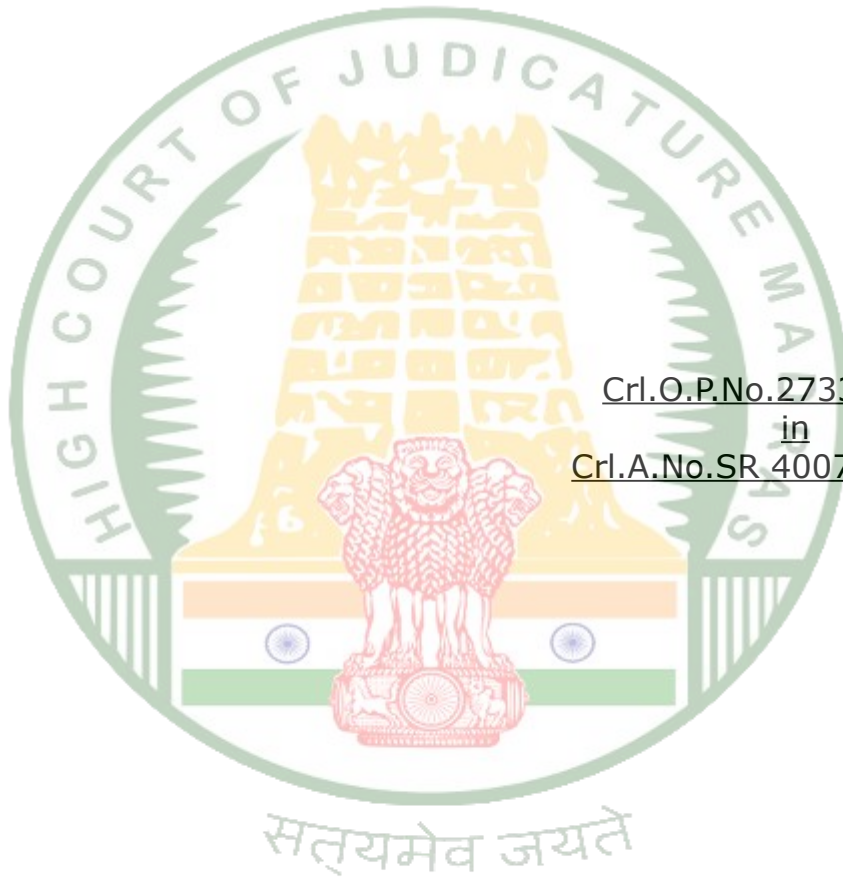
2.The Public Prosecutor,
High Court, Madras.



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P.N.PRAKASH.J.,

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