



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2017

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THE HON'BLE Mrs.JUSTICE J.NISHA BANU

C.R.P.(MD) No.2389 of 2017(PD)
and C.M.P.(MD) No.11396 of 2017

Jesuraj ... Petitioner/Petitioner/1st Defendant

-Vs-

1.A.R.James Raj ... 1st Respondent/1st Respondent/Plaintiff

2.Jayasubramanian

3.The State of TamilNadu

Rep.by the District Collector,
Kanyakumari District at Nagercoil,
Nagercoil Post, Tamilnadu

...Respondents 2 & 3/

Respondents 2 & 3/Defendants 2 & 3

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Order and Decree made in I.A. No.265(a) of 2017 in O.S.No.164 of 2017 dated 11.10.2017 on the file of the Principal Sub-Court, Nagercoil.

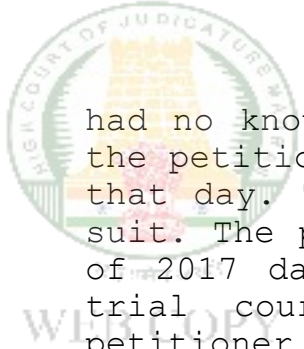
For Petitioner : Mr.Thirunavukarasu
For R1 : Mr.K.P.Narayanakumar

O R D E R

This Civil Revision Petition has been filed to set aside the order made in I.A. No.265(a) of 2017 in O.S.No.164 of 2017 dated 11.10.2017 on the file of the Principal Sub-Court, Nagercoil.

2. It is the case of the plaintiff/first respondent before the trial court that while the petitioner/first defendant was discharging his duty as Inspector of Police, he has maliciously prosecuted the plaintiff/first respondent herein in connection with Crime No. 112 of 2009 and the first respondent/plaintiff has filed the suit in O.S.No.164 of 2017 against the petitioner and the respondents 2 and 3 seeking damages of Rs.5,00,000/- from their assets with future interest for malicious prosecution.

3. The learned counsel for the petitioner/first defendant submitted that on 06.02.2014, the summon was received by the Staff of Vilathikulam DSP Camp Office and no proper intimation was given to the petitioner regarding summons and therefore, the petitioner



had no knowledge about the posting date of the suit. On 25.04.2015 the petitioner was called absent and an ex-parte order was passed on that day. The petitioner/1st defendant was set ex-parte in the said suit. The petitioner has filed I.A.No. 265(a) of 2017 in O.S.No.164 of 2017 dated 11.10.2017 to set aside the ex-parte order and the trial court dismissed the said petition. Against which, the petitioner is before this Court.

4. The learned counsel for the petitioner would further submit that there was no malicious prosecution and as a dutiful and jurisdictional officer, the petitioner has enquired into the complaint till 30.07.2009 and thereafter, the investigation was proceeded and subsequently, the case was charge sheeted on 30.10.2009 by the petitioner's successor in accordance with law after obtaining necessary opinion from the Assistant Director of Prosecution Nagercoil and the Deputy Director of Prosecution.

5. The learned counsel for the petitioner has pointed out that the first respondent has challenged the charge sheet before this Court in CrI.O.P. No.1298 of 2010 dated 24.06.2011 and about one year later i.e on 23.06.2012, the suit in O.S.No.129 of 2012 was filed and the same was transferred to the file of the Principal Sub Court, Nagercoil and renumbered as O.S.No.164 of 2017.

6. The learned counsel for the first respondent/plaintiff would submit that the petitioner was set ex-parte on 25.04.2014 and after a long time, he has filed a petition to set aside the ex-parte order and such an inordinate delay has not been properly explained by the petitioner and therefore, the trial court has rightly dismissed the petition and therefore, the same does not warrant interference by this Court.

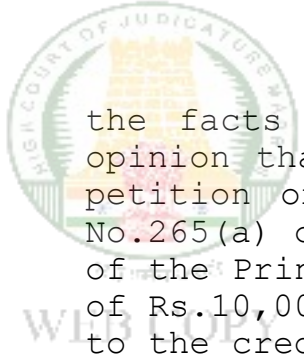
7. Heard the learned counsel for the petitioner and the learned counsel appearing for the first respondent and perused the materials available on record.

8. The learned counsel for the petitioner has mainly argued that the petitioner was unaware of the notice received by the Camp Office at Vilathikulam and hence, he could not appear before the trial court on that date. He would further submit that in view of ex-parte order, the petitioner is unable to put forth his contention, which would greatly prejudice the petitioner and put him to irreparable loss.

9. It is the case of the petitioner that there was no malicious prosecution and as a dutiful and jurisdictional officer, the petitioner has enquired into the complaint and the investigation was proceeded and the case was charge sheeted on 30.10.2009 by the petitioner's successor after obtaining opinion from the Assistant Director of Prosecution, Nagercoil.

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

10. Upon hearing the submissions made by both sides and in



the facts and circumstances of the case, I am of the considered opinion that ends of justice would be met by allowing the revision petition on terms. Accordingly, the impugned order passed in I.A. No.265(a) of 2017 in O.S.No.164 of 2017 dated 11.10.2017 on the file of the Principal Sub Court, Nagercoil, is allowed on payment of cost of Rs.10,000/- (Rupees ten thousand only) by the revision petitioner to the credit of the suit within a period of six weeks from the date of receipt of a copy of this order, failing which, I.A.No.265(a) of 2018 in O.S.No.164 of 2017 shall stand dismissed automatically without further reference to the Court.

11.With the above direction, this Civil Revision Petition stand allowed. No costs. Consequently, connected C.M.P.(MD) No.11396 of 2017 is closed.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Nagercoil.

CM
TE/MR/SAR-3 : 07/02/2018 : 3P/2C

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and C.M .P.(MD) No.11396 of 2017
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