



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

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Crl.R.C(MD) .No.814 of 2013

The Managing Trustee,
P.S.N. Education and Charitable Trust,
Court Road,
Nagercoil,
Kanyakumari District.
Represented by its Power Agent,
J.Jeya Prakash

... Petitioner

-Vs-

P.Mookammal

... Respondent

Prayer : Criminal Revision Case filed under Section 397 read with 401 of the Code of Criminal Procedure, against the order passed by the learned Judicial Magistrate No.V, Tirunelveli, Tirunelveli District in Cr.M.P.No.3039 of 2012 vide his order dated 07.06.2013 and set aside the same and consequently direct the said learned Judicial Magistrate to proceed with the said private complaint in accordance with law.

For Petitioner : Mr.M.Balaji
for M/s.R.Anand
For Respondent : No appearance

O R D E R

This present Criminal Revision Case has been filed against the dismissal order of Cr.M.P.No.3039 of 2012, dated 07.06.2013.

2. A private complaint, under Section 138 and 142 of the Negotiable Instrument Act, has been filed by the petitioner herein, on the ground that the respondent herein entered into a sale agreement, with, the respondent also received an advance amount of Rs.60,000/- (Rupees Sixty Thousand only) from the petitioner herein. Subsequently, the respondent received Rs.7,00,000/- (Rupees Seven Lakhs only) by a Demand Draft from the petitioner as a part sale consideration. Then the petitioner came to know that the respondent herein sold the property in favour of some 3rd party. Hence, the petitioner approached the respondent to repay the advance amount. The respondent issued cheques for a sum of Rs.2,00,000/- and Rs.3,00,000/- and the same have been returned



for the reason of insufficient amount. Hence, the petitioner filed a complaint. The petitioner did not appear before the Court for giving sworn statement. In the above circumstances, the Court below dismissed the complaint for default. Now, challenging the the above order, the present Revision has been filed.

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3. The learned counsel for the petitioner would submit that due to some ill health, he could not contact his counsel and was not able to appear before the Court for giving sworn statement. In the above circumstances, he did not aware of the posting of the case. There is no willful intention on the part of the petitioner in the bonafide reasons of non-appearance.

4. I have considered the submission made by the learned counsel for the petitioner and perused the records.

5. A perusal of the records would show that even though, a notice has been sent to the respondent, it was not served on her. As the complaint has been dismissed even before the cognizance is taken by the Court, No notice is necessary to the respondent, hence notice is dispensed with.

6. Considering the facts and circumstance of the case and considering the fact that the complaint has been dismissed before taking cognizance and issuing summons to the accused. The complaint is dismissed only for non-appearance of the petitioner and the reasons for non-appearance also seems to be bonafide. In order to give an opportunity to the petitioner, the impugned order passed by the Court below is set aside and the Criminal Revision Case is allowed and the Court below is directed to restore the complaint on file and proceed with the complaint in accordance with law.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To
The Judicial Magistrate No.V,
Tirunelveli.

+1 cc to Mr.R.Anand , Advocate in SR.No. 70907

sm/psd
AE/GT/SAR1/21.09.2017/2P/3C

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