

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.541 of 2018

G.Krishnan ... Petitioner/Petitioner
Vs.

E.Sathish Kumar ... Respondent/Respondent

PRAYER : The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure set aside the order dated 22.02.2016 of the learned XVII Metropolitan Magistrate, Saidapet, in C.C.unnumbered of 2016 and to restore the case on file.

For Petitioner : Mr.V.Venkatesan

For Respondent : No appearance

O R D E R

The present revision case has been filed against the order dated 22.02.2016 of the learned XVII Metropolitan Magistrate, Saidapet, in C.C.unnumbered of 2016, dismissing the case for no appearance and to restore the case on file.

2. The facts which gave rise to file this revision case are stated hereunder:-

(i) According to the petitioner/complainant, the respondent/accused had approached him and borrowed a sum of Rs.3,00,000/- as a hand loan and in discharge of the loan, the respondent had handed over two cheques bearing No.000001 dated 01.09.2014 and a cheque bearing No.000002 dated 06.11.2014, both for a sum of Rs.1,50,000/- each. When the cheques were presented, the same were returned unpaid with an endorsement "funds insufficient". Thereafter, a statutory notice was issued on 03.12.2014, for which, there was no reply from the respondent.

(ii) In the above circumstances, the petitioner filed a case under Section 138 of the Negotiable Instruments Act before the learned XIV Metropolitan Magistrate, Egmore on 17.02.2015, as originally, the said Court had jurisdiction to try the issue. Subsequently, on the basis of the order passed by the Hon'ble Supreme Court of India, the case was transferred to the learned XVII Metropolitan Magistrate, Saidapet on 29.06.2015 and the case records appeared to have been returned to the petitioner to file in the Court concerned. Thereafter, the petitioner filed the papers before the learned XVII Metropolitan Magistrate, Saidapet, on 03.07.2015, within the limitation period.

(iii) While so, it appears that the petitioner's wife was diagnosed with Throat Cancer and the petitioner had to be with his wife to attend all the medical needs of her. In view of the continuous medical treatment being given to his wife, there was a communication gap between the petitioner and the erstwhile counsel. In these circumstances, there was no appearance on 22.02.2016, when the case was listed for taking the complaint on file. In view of the absence of the learned counsel as well as the petitioner/complainant, the learned XVII Metropolitan Magistrate had dismissed the case for default on 22.02.2016 in C.C.unnumbered of 2016. As against the said order, the present revision case has been filed.

3. The learned counsel for the revision petitioner would submit that private notice has been taken on the respondent. Despite the service, there was no appearance on behalf of the respondent. Even otherwise, the learned counsel for the petitioner would submit that since the complaint itself was not taken on file and no process was issued to the respondent/accused, the question of hearing the petitioner before this Court does not arise at all, at this stage. In any event, the learned counsel would submit that in view of the situation as explained, the petitioner could not be effectively represented before the Trial Court and his absence was neither willful nor wanton, but, only for the reason stated above. Therefore, he pleaded this Court to allow the revision case and set aside the order passed by the learned XVII Metropolitan Magistrate, Saidapet, in C.C.No.unnumbered of 2016 and to restore the case on file.

4. Considering the submissions made on behalf of the petitioner herein and also having perused the materials placed on record, this Court is satisfied with the reasons set forth for non-appearance of the petitioner on 22.02.2016. In the said circumstances, this Court is of the view that the petitioner ought to have been given a chance to pursue the complaint as against the respondent/accused. If the revision case is not to be entertained, it could cause irreparable hardship to the

petitioner and if the revision case is allowed, no prejudice would be caused to the respondent/accused as he can always plead his defence before the Trial Court.

5. In the above circumstances, the revision case is allowed and the order of the learned XVII Metropolitan Magistrate, Saidapet, in C.C.unnumbered of 2016 dated 22.02.2016, is hereby set aside and the complaint filed by the petitioner shall stand restored.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

gsk

To

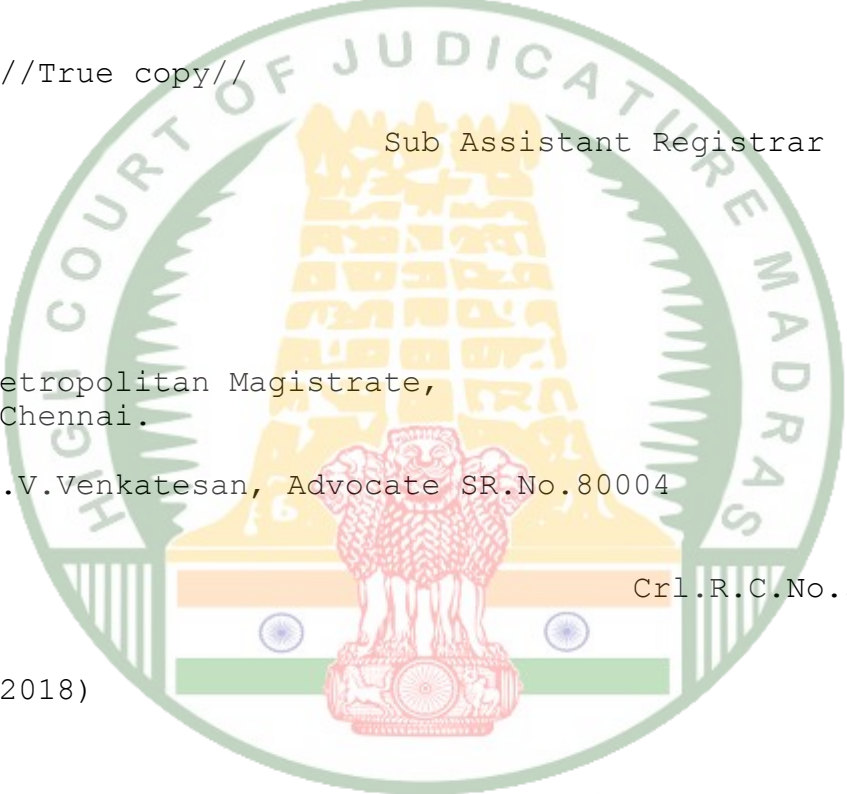
The XVII Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to Mr.V.Venkatesan, Advocate SR.No.80004

Cr1.R.C.No.541 of 2018

SJ(CO)

GMV(14/12/2018)



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