

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.17752 of 2018

K.Selvaraj

... Petitioner

Vs

V.Subha

...Respondent

Criminal Original Petition has been filed under Section 482 Cr.P.C. to set aside the order passed by the learned XVII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.2158 of 2016 dated 21.05.2018 and to pass an order of restoration of above C.C.No.2158 of 2016 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.M.Jaikumar

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 21.05.2018 passed by the XVII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.2158 of 2016 and to pass an order of restoration of above C.C.No.2158 of 2016 on the file of the XVII Metropolitan Magistrate Court, Saidapet, Chennai.

2. The petitioner is the complainant in C.C.No.2158 of 2016 for the offence under Section 138 of the Negotiable Instruments Act, 1881, before the XVII Metropolitan Magistrate, Saidapet, Chennai. On 21.05.2018, the trial Court has dismissed the complaint, by passing the following order:

"Complainant and Accused absent. Petition U/s.317 filed and allowed. But complainant called absent. No representation, sufficient chance given. Hence, dismissed for default."

3. Challenging the said order, the complainant has filed the present petition.

4. Heard Mr.M.Jaikumar, learned counsel for the complainant, who submitted that the complainant may be given an opportunity to continue the prosecution.

5. In the opinion of this Court, against the order passed under Section 256 Cr.P.C. dismissing the complaint for default, a remedy to the complainant is by way of filing an appeal against the acquittal before the Sessions Court in the light of the law laid down by the Full Bench of this Court in S.Ganapathi Vs. N.Senthilvel [2016 (3) MLJ [CrI] 641].

6. Hence, this petition is closed, with liberty to the petitioner to work out his remedy in the manner known to law. However, the time spent by the petitioner from 03.07.2018 to 13.07.2018 before this Court shall stand excluded in computing the period of limitation. The Registry is directed to return the impugned order to the learned counsel for the petitioner, after taking a photo copy and certifying the same, so that the petitioner can work out his remedy as stated above.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

mk

To

1. XVII Metropolitan Magistrate,
Saidapet, Chennai.

+1 CC to Mr.M. Jaikumar, Advocate sr 45875.

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SP(13/07/2018)

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