

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Cr1.R.C.No.1097 of 2018

M.Tamilselvi

... Petitioner

Vs

N.Kandan

... Respondent

Prayer: Petition filed under Section 397 read with 401 of Cr.P.C, against the dismissal order dated 01.08.2016 passed by the FTC - III Metropolitan Magistrate, Chennai in C.C.No.2082 of 2014.

For Petitioner : Mr.K.Gandhi Kumar

For Respondent : No appearance

O R D E R

The present Criminal Revision has been filed against the order dated 01.08.2016 passed by the Fast Track Court - III Metropolitan Magistrate, Chennai, in C.C.No.2082 of 2014, dismissing the complaint filed by the petitioner under Section 204 of Cr.P.C.

2. The petitioner had filed a complaint under Section 138 of the Negotiable Instruments Act for dishonour of cheque against the respondent herein. For the absence of the respondent/accused, non-bailable warrant was issued and the same was pending for some time. On the day when the impugned order was passed in C.C.No.2082 of 2014, dated 01.08.2016, it appears that the warrant was not executed and there was no appearance of the accused and also there was no representation on behalf of the petitioner/complainant. Therefore, the trial Court had dismissed the complaint itself under Section 204 of Cr.P.C.

3. The learned counsel for the revision petitioner would submit that the dismissal of the complaint under Section 204 of Cr.P.C is un-sustainable, since the petitioner/complainant has no obligation to pay a process fee, once non-bailable warrant was already issued and pending under Section 87 of Cr.P.C. In

this regard, the learned counsel for the revision petitioner would draw the attention of this Court to an order passed by the High Court of Kerala in Crl.Rev.Pet.No.1003 of 2015 and he would particularly draw the attention of this Court to paragraph No.15, which reads as under:

"15. The above discussion would make it clear that the Court has the power to direct the complainant to pay process fees or other fees, as prescribed under the Rules, for the purpose of issuing summons of warrant against the accused under Section 204(1) of the Code. If the accused fails to appear before the Court as directed in the summons and the summons is proved to have been duly served and no reasonable excuse is offered for such failure, the Court may issue a warrant for his arrest under Section 87(b) of the code and not under Section 204(1)(b) of the Code. The mandate under Section 204(4) of the Code to pay process-fees or other fees payable under any law for the time being in Crl.R.P.No.1003 of 2015 force and the discretion of the Court to dismiss the complaint if process-fees are not paid within a reasonable time, are not applicable to the provisions of Section 87 of the code in view of the provisions of sub Section (5) of the Section 204 of the Code. That apart, there is no provision under Section 87 of the code requiring the complainant to pay process-fee for issuing warrant under Section 87(b) of the Code. Therefore, the Courts should not require the complainant to pay process-fee for issuing warrant under Section 87(b) of the Code and consequently, the Court should not dismiss the complaint in such cases under Section 204(4) of the Code for non-payment of process-fee. It is reiterated that if the accused abstains after the service of summons or after his appearance before the Court, the warrant will be issued under Section 87(b) of the Code which requires no process fee to be paid by the complainant. The steps to be initiated under Sections 82 and 83 of the Code in such Crl.R.P.No.1003 of 2015 cases are in continuation of the above said proceedings and consequently, the steps initiated in such cases do not require any process fee to be paid by the complainant. Therefore, the Court cannot dismiss the complaint under Section 204

(4) of the Code for non-payment of process fee in such cases. On the other hand, if the warrant is issued prior to the service of summons or appearance of the accused before the Court or his production before the Court, process fee is required to be paid by the complainant in view of the provisions of Section 204 of the Code. Consequently, in the further proceedings in such cases where Sections 82 and 83 steps are issued, the complainant is bound to pay the process fee and consequently, the Court is having the discretion to dismiss the complaint in such cases under Section 204(4) of the Code for non-payment of process fee.

The above discussion would lead to the following conclusion: (a) If summons is issued in a case, the complainant CrI.R.P.No.1003 of 2015 is bound to pay process fee; (b) If warrant is issued in a case before the service of summons on the accused or before the appearance of the accused before Court, the complainant must pay process fee; (c) If proceedings under Section 82 and 83 of the Code are initiated in a case before the service of summons on the accused or before the appearance of the accused before the Court, the complainant must pay the process fee; d) If warrant is issued after the service of summons or after the appearance of the accused before the Court, the complainant need not pay any process fee; and e) If proceedings under Sections 82 and 83 are initiated after the service of summons on the accused or after the appearance of the accused before the Court, the complainant need not pay any process fee." सत्यमेव जयते

In any case, the learned counsel would submit that the revision petitioner may be given one more opportunity to prosecute the complaint.

4. Despite notice to the respondent and service of notice having been acknowledged, no representation on behalf of the respondent. In fact, the name of the respondent is also been printed in the cause list and the matter is taken up for hearing today, the respondent is neither represented by any counsel nor appeared personally.

5. In view of the submissions made by the learned counsel for the revision petitioner, this Court is of the view that there is some force in the contention put forth on the behalf of the petitioner. For the above said reasons, the impugned order dated 01.08.2016, passed by the Fast Track Court - III Metropolitan Magistrate, Chennai, in C.C.No.2082 of 2014, is hereby set aside. The trial Court is directed to take the complaint filed by the petitioner herein on file in the above said C.C.No.2082 of 2014 and deal with the complaint in terms of the procedure governing such trial of complaint.

6. The criminal revision case stands allowed on the above terms.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The learned III Metropolitan Magistrate,
Fast Track Court,
Chennai.

Crl.R.C.No.1097 of 2018

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