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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.04.2018

DELIVERED ON : 25.06.2018

CORAM

THE HONOURABLE MRS.JUSTICE R. THARANI

Cr1.R.C.(MD)No.198 of 2018

Suresh

.. Petitioner

Versus

Paulsamy

.. Respondent

Prayer: Criminal Revision Petition Appeal filed under Sections 397 and 401 Cr.P.C., to call for the records and set aside the order dated 29.01.2018 made in Cr.M.P.No.2251 of 2017 on the file of the learned Judicial Magistrate Court, Sankarankovil, Tirunelveli District.

For Petitioner : Mr.P.Krishnasamy

O R D E R

Heard Mr.P.Krishnasamy, learned counsel appearing for the petitioner.

2.This petition has been filed to set aside the order passed in Cr.M.P.No.2251 of 2017 before the learned Judicial Magistrate Court, Sankarankovil, Tirunelveli District dated 29.01.2018.

3.The respondent borrowed a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) from the petitioner and promised to return the amount within a period of 20 days. The respondent issued a cheque dated 03.05.2018 for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only). When the cheque was presented for collection, the same was returned as "Payment stopped by drawer". The petitioner filed a case against the respondent before the learned Judicial Magistrate, Sankarankovil. The learned Judicial Magistrate, Sankarankovil has taken the complaint on file in Cr.M.P.No.2251 of 2017. On 08.06.2015, 12.06.2015, 19.06.2015, 01.07.2015, 17.09.2015, 03.10.2015 and 03.05.2017, the complainant/petitioner herein was present before the learned Judicial Magistrate. The sworn statement of the petitioner was recorded on 19.06.2015 itself. Subsequently, the learned Judicial Magistrate has dismissed the complaint on 2.01.2018 for the absence of the complainant.



4. On the side of the petitioner, it is stated that the petitioner is the Headmaster and the respondent is the Teacher working in the same School and the respondent demanded a loan of Rs.10,00,000/- (Rupees Ten Lakhs only) from the petitioner to repay the loan obtained by the respondent from the Life Insurance of India. The respondent promised to repay the amount within a period of 20 days. After obtaining a fresh loan from the Life Insurance of India, it is further stated that the respondent issued a cheque for a sum of Rs.4,00,000/- (Rupees Four Lakhs only). When the same was presented, it was returned as 'Payment stopped by drawer'. It is stated that the petitioner was regularly appeared before the Court. Even after recording the sworn statement on 19.06.2015, the learned Magistrate has not taken up the complaint on file. For certain period, the post of the learned Judicial Magistrate was kept vacant and afterwards, without issuing notice to the petitioner under Section 256(1) of Cr.P.C., the Magistrate has dismissed the case. It is stated that it is the duty of the Magistrate to issue notice to the complainant before the dismissing the case. It is stated that the Advocate who appeared for the petitioner was suffering from jaundice and hence the petitioner was not able to follow the hearing dates.

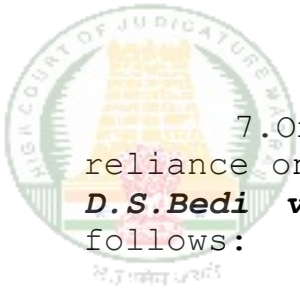
5. The learned counsel for the petitioner placed reliance on the order passed by this Court in the case of **A.V.Rajeswari v. Santha Sarees** in **Criminal Appeal Nos.858 to 864 of 2007**, which reads as follows:

"...if the complainants are not present before the Court, it is incumbent upon the Presiding Officer to issue notice to the complainants and without issuance of such notice, adopting the procedure of dismissing the complaints under Section 256(1) Cr.P.C., is not at all appreciable.

7. In view of the above said decisions, this Court is of the opinion that the learned Magistrate should have adjourned the case to some other date to enable the complainants to be present before the Court and in the meanwhile, necessary notice should have been sent to the complainants. In these circumstances, this Court finds that legal grounds are available for allowing this appeal."

6. On the side of the petitioner, the learned counsel placed reliance on the order passed by the Supreme Court in the case of **Associated Cement Co. Ltd v. Keshvanand** in **Crl. No.1239 of 1997**, which reads as follows:

"Any rate, absence of the complainant envisaged in S.249 or 256 of the new code would include absence of the corporeal person representing the incorporeal complainant."



7. On the side of the petitioner, the learned counsel placed reliance on the Judgment passed by the Supreme Court in the case of **D.S.Bedi v. P.Jayavelu** in **Crl.A.No.916 of 2007**, which reads as follows:

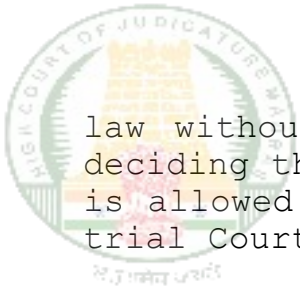
"3....the failure on the part of the Court below in issuing notice to the complainant before dismissing the complainant has resulted in miscarriage of justice."

"5...The Courts below is further directed to restore the complaint in its file and proceed with it in accordance with law."

8. Records perused. A perusal of the records reveals that the complainant is present from 12.06.2015 till 03.05.2017. The complaint filed by the petitioner was not called in the open Court. In the 'B' Diary, it is stated that on 03.05.2017, மனுதாரரால் மேற்படி Cr.M.P.No.3889/15 வழக்கானது செய்யப்பட்டு மேற்படி வழக்கானது ஒரு வருடத்திற்கு மேலாக வாய்தாவிற்று வரவில்லை என மனுதாக்கல் செய்ததின் அடிப்படையில் தேடிப்பார்த்து எடுக்கப்பட்டது. அதில் மேற்படி வழக்கானது 19.06.2015 அன்று sworn statement எடுக்கப்பட்டுள்ள நிலையில் உள்ளது. எனவே உரிய உத்தரவிற்காக, and the matter was posted for further proceedings on 11.05.2017. The petitioner who is the complainant in the petition was absent afterwards.

9. From the records, it is clear that there was fault on the side of the Court in not taking up the matter in the open Court from 12.06.2015 till 03.05.2017. On the side of the petitioner, it is stated that the counsel for the petitioner was suffering from jaundice and could not inform the petitioner regarding the hearing dates. This statement of the petitioner is not supported by any documents. The learned Judicial Magistrate after recording the sworn statement has to decide whether to number the complaint or to reject the complaint instead of doing so, it seems that the Judicial Officer has postponed the matter without any progress. It is the mistake on the part of the Court not calling upon the matter from 08.06.2015 till 03.05.2017. Only after the petitioner has filed a petition on 13.05.2017 that his case was not called in the Court, this petition was taken up on 29.01.2018 and the petition was dismissed due to the absence of the petitioner. There is no possibility for the petitioner to have knowledge of the hearing date as the case was not called in the open Court till then. The Judicial Officer has failed to call the case in the open Court. Only after one year, the bundle was traced out and was brought before the open Court. It is the duty of the Judicial Officer to issue notice to the complainant. Without considering the fault of the Court, the case was dismissed by the learned Judicial Magistrate as no representation on the side of the complainant. No notice was issued to the respondent in this petition. The respondent has not turned up to contest the petition.

10. In the circumstances, the order of the Judicial Magistrate, Sankarankovil has to be set aside and the learned Judicial Magistrate, Sankarankovil is hereby directed to restore the case and to take the case on file on merits and in accordance with



law without considering the delay caused by this petitioner while deciding the period of limitation. Hence, the Criminal Revision Case is allowed. The Registry is directed to sent this order copy to the trial Court as expeditiously as possible.

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Sd/-
Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate,
Sankarankovil,
Tirunelveli District.

MRN
RJ/RP/SAR-3/17/07/2018 - 4P/2C

Crl.R.C. (MD) No.198 of 2018
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