

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.02.2019

CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.3519 of 2019

Chandrakala Mehta

...Petitioner

Vs.

Vijayaram Kumar

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order of dismissal passed in SR.No. 4267/2018 dated 14.11.2018 by the learned FTC-II M.M. Egmore, Chennai.

For Petitioner : Mr.Kavitha Singuluri

ORDER

This Criminal Original Petition has been filed by the petitioner under Section 482 of Cr.P.C. to to set aside the order of dismissal which was passed for non prosecution in SR.No. 4267/2018 dated 14.11.2018 by the learned FTC-II M.M. Egmore, Chennai.

2.The learned counsel for the petitioner would submit that the learned Metropolitan Magistrate of FTC-II dismissed the complaint filed by the petitioner for the offence under Section 138 and 141 of Negotiable Instruments Act at the threshold without summons to accused and before taking cognizance of offence under Section 203 of Cr.P.C. for non prosecution.

3.The learned counsel would further submit that the order is non speaking one and also only one day the complainant was absent. Without even giving opportunity to the complainant, the complaint was dismissed in limini. The learned counsel further submitted that without giving opportunity to the defacto complainant to record the statement, the learned Magistrate dismissed the complaint. Accordingly, prays for setting aside the order.

4.The complaint has been filed by the petitioner for the offence under section 138 of Negotiable Instruments Act. Originally the complaint was filed on 13.04.2018. The said case was adjourned for recording sworn statement on 14.11.2018. On the said date neither the complainant nor his counsel represented the complaint. Therefore, this case was dismissed for default. It is also seen that till 14.11.2018 no sworn

statement was recorded from the defacto complainant.

5.Considering the above facts and circumstances of the case, the petitioner may be given one more opportunity to proceed his complaint. Therefore, this Court is inclined to set aside the order passed by the learned Metropolitan Magistrate of FTC-II Court at Egmore, Chennai in SR.No.4267 of 2018. Accordingly, this criminal original petition is allowed. SR.No.4267 of 2018 hereby restored.

6.The learned Magistrate shall record the sworn statement of the petitioner on the first date of hearing itself and pass orders after taking cognizance of the complaint on merits in accordance with law. If the petitioner fails to appear before the learned Magistrate on the first hearing date fixed by the learned Metropolitan Magistrate of FTC-II court at Egmore, Chennai, the complaint stands dismissed automatically without any further reference to the Court.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsn/kas

To

1.The Metropolitan Magistrate
FTC-II, Egmore, Chennai.

2.-do- Thro'Chief Metropolitan Magistrate,
Chennai.

+lcc to Mr.S.Kavitha Singuluri, Advocate, S.R.No.12543

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NRK (CO)

rrs 14/02/2019