



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.R.C.(MD)No.682 of 2013

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Palaniappan

... Petitioner/Complainant

Vs.

Subburaj

... Respondent/Accused

PRAYER: Criminal Revision case is filed under Section 397 r/w Section 401 of Cr.P.C., to call for the records and to set aside the order of the learned Judicial Magistrate, Fast Track Court (M.L), Uthamapalayam, dated 06.06.2013 made in S.T.C.No.658 of 2011 of dismissing the private complaint filed by the petitioner and acquitted the accused and to restore the case against the respondent.

For Petitioner : Mr.B.Jeyakumar
For Respondent : Mr.N.Shankar Ganesh
Legal Aid Counsel

O R D E R

This criminal revision case has been filed by the petitioner/complainant as against the order passed by the learned Judicial Magistrate, Fast Track Court (M.L), Uthamapalayam, in S.T.C.No.658 of 2011, dated 06.06.2013, in the proceedings initiated under Section 138 of Negotiable Instruments Act.

2.The learned counsel appearing for the petitioner/complainant submitted that the petitioner/complainant has filed a private complaint against the respondent/accused for the offence under Sections 138 and 142 of Negotiable Instruments Act before the learned Judicial Magistrate, Fast Track Court(M.L), Uthamapalayam and the same was taken on file in S.T.C.No.658 of 2011. Subsequently, a summon was sent to the respondent for his appearance to contest the above said private complaint. After receiving the summons, the respondent did not appear before the concerned Court. Thereafter, the learned Judicial Magistrate issued a Bailable Warrant against the respondent/Accused on 24.11.2010. According to the complainant, he has also taken steps by filing a process memo on 14.12.2010. Subsequently, the warrant has been sent to Shenoy Nagar Police Station, Chennai, for executing the warrant against the respondent/accused. Whilesso, again in the year 2012, another Bailable Warrant was issued by the trial Court which was not known to the petitioner/complainant. When the matter was taken up for hearing, the learned trial Court dismissed the complaint under Section 204(4) of Cr.P.C and acquitted the accused stating that



complainant called absent, no representation accused bailable warrant pending process fee not yet paid for obtaining the warrant. Aggrieved over the said order, the present petition is filed.

3.This revision case was admitted in the year 2013 and notice was ordered and the same was returned as "respondent/accused left". Since the matter is pending for the past six years, this Court appointed Mr.N.Sankar Ganesh, (Enroll. No.2095/99), legal Aid Counsel to defend the case of the respondent/accused and posted the matter today for final disposal.

4.When the matter is taken up for hearing today, Mr.N.Sankar Ganesh, learned Legal Aid Counsel appearing for the respondent/accused fairly conceded that the order passed by the learned Judicial Magistrate under Section 204(4) Cr.P.C by dismissing the complaint and acquitting the accused was not proper. He relied upon the relevant judgment of this Court in the case of **Tom Thomas Vs. Abdul Lathief and Another** reported in **2007 CrLJ 1143**, wherein, Para 5 reads as follows:

"When there is a specific provision to dismiss a complaint for non-payment of process fees etc., such an order cannot be treated as an order of acquittal. Had the legislature intended that such order will also amount to an order of acquittal, coming within the purview of Section 378 of the Code, there was absolutely no difficulty in using the word "acquit" instead of "dismiss" in Section 204(4) of the Code. But in the absence of doing so, the only inference possible is that the legislature did not intend to "acquit" an accused for failure of the complainant to pay the requisite fee etc. This Court cannot treat an order of dismissal under Section 204(4) of the code as order of acquittal, against the clear and unambiguous expressions contained in the provision."

5.The learned counsel appearing for the respondent has also relied upon a judgment of this Court in the case of **Anandha Vadivelu Vs. Kannappan** reported in **(2011) 3 MadWN (Cri) 87**, has dismissed the revision petition that the order of dismissal and acquittal of the accused under Section 204(4) Cr.P.C, is not an appealable order.

6.The learned counsel appearing for the petitioner/complainant has also produced a order of this Court passed in Crl.R.C.No.181 of 2015 dated 22.04.2015, wherein, para 4 reads as follows:

"4.....However, the complaint has not been dismissed for non appearance of the petitioner under Section 256 of the Code, but the same was dismissed by the learned Magistrate only under Section 204(4) of the Code of Criminal procedure,



on account of non payment of process fee for issuance of summons to the accused. On such a trivial ground, in my considered opinion, the valuable right of the petitioner to have an effective contest cannot be deprived of....."

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7.Considering the facts and circumstances of the case, this criminal revision case is allowed and the order of the learned Magistrate in S.T.C.No.658 of 2011 is set aside and the complaint is remanded back to the concerned Judicial Magistrate. However, the learned Judicial Magistrate, Fast Track Court (M.L), Uthamapalayam, is directed to take up the matter immediately and dispose the same within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

vsg

To

1.The Judicial Magistrate,
Fast Track Court (M.L),
Uthamapalayam.

+1 CC to Mr.N.SHANKAR GANESH, Advocate (SR-94544[F] dated
25/10/2019)

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MK (06.12.2019) 3P 3C