



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 06.08.2019

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

**Crl.RC(MD)No.106 of 2019**

WEB COPY

N.Kathirava Aathithan

: Revision Petitioner/  
Complainant

Vs.

Rosline

: Respondent/Accused

**Prayer:** Criminal Revision filed under Sections 397(1) r/w 401 of the Criminal Procedure Code, against the judgment, dated 22.01.2019 passed in Crl.A.No.2 of 2019 on the file of the Principal Sessions Judge, Thoothukudi, confirming the order, dated 03.12.2010 passed in STC No.548 of 2008 on the file of the Judicial Magistrate, Sathankulam, Thoothukuudi.

For Revision Petitioner : Mr.A.Thiruvadi Kumar

For Respondent : No appearance

**O R D E R**

This Criminal Revision is directed against the judgment, dated 22.01.2019 passed in Crl.A.No.2 of 2019 by the Principal Sessions Judge, Thoothukudi, confirming the order, dated 03.12.2010 passed in STC No.548 of 2008 by the Judicial Magistrate, Sathankulam, Thoothukuudi.

2.The petitioner/complainant has filed a private complaint under section 138 of the Negotiable Instruments Act and under section 200 of Cr.P.C before the Judicial Magistrate, Sathankulam against the respondent/accused alleging that he and the husband of the respondent were acquaintance in business and that on 10.06.2007, the respondent borrowed a sum of Rs.4,00,000/- from him and promised to pay the same within 20 days and issued a cheque bearing No.113861, dated 16.07.2007 drawn on HDFC Bank, Thambaram in his favour and on 31.12.2007, when the petitioner presented the same for collection before the Tamil Nadu Mercantile Bank, Kommadikottai Branch, Thoothukudi District, it was returned with an endorsement "Insufficient Funds" and thereafter, on 29.01.2008, the petitioner issued a legal notice, however, which was returned by the respondent on 16.02.2008. Hence, the case.



3.The learned Judicial Magistrate, Sathankulam, passed an order in STC No.548 of 2008, dated 03.12.2010 holding that both parties absent from 11.06.2010 and this court has ordered to issue BW against accused afresh and though sufficient opportunity is given, process fee not submitted and hence, the complaint is dismissed under section 204(4) of Cr.P.C. Aggrieved by the order of the trial court, the petitioner filed criminal appeal before the Principal Sessions Judge, Thoothukudi, in Crl.A.No.2 of 2019, dated 22.01.2019. The learned Judge dismissed the appeal, by confirming the order of the trial court. Hence, the petitioner is before this court.

4.Heard the learned counsel appearing for the petitioner and perused the materials available on record. In-spite of giving sufficient opportunity, no representation for the respondent.

5.It is the contention of the learned counsel appearing for the petitioner that due to the inadvertence, the process fee could not be paid at appropriate time; that the petitioner was much interested in prosecuting the case and that one more opportunity may be given to him. In support of his contention, he placed reliance upon a decision of this court reported in **Elumalai Vs. K.Sukumar (1997(1) Crimes 5)** wherein in an identical matter, while having discussion on a case under Section 204(4) of Cr.P.C, this court has expressed opinion that even though the complainant was not present and process fee was not paid on a particular hearing, the learned Judicial Magistrate should have given one more opportunity to the complainant, where he had paid process fee on two occasions.

6.It is seen that the petitioner/complainant has been following the case right from the date of his filing in the year 2008. It is settled law that the complaint cannot be dismissed on the absence of the complainant nor on the ground of non-payment of fee. It is also seen that the petitioner approached this court by way of filing Crl.RC(MD)No.17 of 2012 and this court, by order, dated 08.11.2008 remitted the case to the learned Principal Sessions Judge, Thoothukudi to treat the order of the trial court as an appeal.

7.Perusal of the impugned judgment would go to show that separate appeal came to be filed in view of the irregularity being pointed out by the petitioner. Hence, this court is of the considered view that the petitioner/complainant is very much interested in proceeding/conducting the case and no fault could be attributed as against him.

8.In such view of this matter, the trial court has to be



directed to restore the complaint to its file and proceed with it in accordance with law. The order challenged before this court has to be set aside and it is accordingly, set aside.

9. In the result, this criminal revision is **allowed** directing the learned Judicial Magistrate, Sathankulam, Thoothukudi District to restore the complaint in STC No.548 of 2008 on its file and to afford one more opportunity to the complainant to pay process fee and proceed further in accordance with law.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

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To,

1. The Judicial Magistrate,  
Sathankulam.

2. The Principal Sessions Judge,  
Thoothukudi.

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate ( SR-80144[F] dated  
07/08/2019 )

**Cr1.RC(MD)No.106 of 2019**  
**06.08.2019**

KM/(13.12.2019) 3P 4C