



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.06.2019
Pronounced on : 06.09.2019

CORAM

THE HONOURABLE JUSTICE MRS.T.KRISHNAVALLI

CRL.RC(MD) No. 211 of 2019
and
Cr.M.P.(MD) No.3208 of 2019

M.Sathianathan : Petitioner/Appellant/Accused

Vs

M/s Thirumurugan Finance by its,
Proprietor S. Kalimuthu,
No.15-D, Kavery Nagar,
Mela Chinthamani,
Trichy District : Respondent/Respondent/Complainant

Prayer: This Criminal Revision has been filed under Section 397 r/w 401 of the Criminal Procedure Code against the order, dated 02.03.2019 passed in C.A.No.20 of 2019 by the learned Principal Sessions Judge, Trichy.

For Petitioner : Mr.T.Senthil Kumar

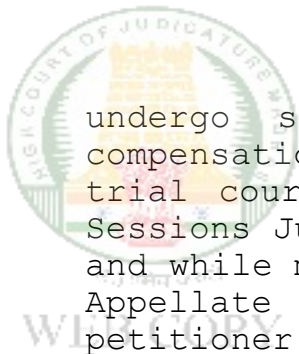
For Respondent : Mr.V.Singan

O R D E R

This criminal revision is directed against the order, dated 02.03.2019 passed in C.A.No.20 of 2019 by the Principal Sessions Judge, Trichy.

2.The brief facts of the case are that the petitioner/accused borrowed a sum of Rs.4,00,000/- from the respondent/complainant on 19.04.2016 agreeing to repay the said amount along with accrued interest @ 18% per annum and when the complainant presented the cheque for collection on 08.02.2017, the same was returned with an endorsement "Account Closed" and subsequently, the complainant issued a statutory notice to the accused and the same was received by the accused on 09.03.2017, however, he has not chosen to repay the amount. Hence, the case.

3.The trial court, by judgment, dated 08.01.2019 made in CC No.128 of 2017 convicted the petitioner/accused for the offence under Section 18 of Negotiable Instruments Act and sentenced him to



undergo simple imprisonment for 1 year and also to pay a compensation of Rs.4,00,000/-. Aggrieved by the judgment of the trial court, the petitioner preferred appeal before the Principal Sessions Judge, Trichy, which was taken on file as C.A.No.20 of 2019 and while moving suspension of sentence by the petitioner, the First Appellate Judge passed an conditional order to the effect that the petitioner shall deposit a sum of Rs.80,000/- on or before 15.02.2019, vide order, dated 31.01.2019 in CrI.M.P No.1 of 2019. Subsequently, the appeal was taken on file as C.A.No.20 of 2019 and the sentence was suspended and thereafter, due to non appearance of the petitioner on 02.03.2019, the suspension of sentence was cancelled. Aggrieved by the order of the First Appellate Court, dated 02.03.2019, the revision petitioner/accused is before this court.

4.The learned counsel for the petitioner/accused submitted that on 02.03.2009, the case was posted for the appearance of the parties, but due to lack of proper communication from the lower court counsel, it is not possible for him to appear before the Appellate Court. But the Appellate Court Suo moto cancelled the order of suspension of sentence already granted and issued Non-Bailable Warrant and the non appearance of the petitioner before the appellate Court is neither willful nor wanton and due to viral fever, the petitioner could not be able to contact his counsel and the first appellate court without adopting due process of law straight-away cancelled the suspension of sentence without any notice and hence, the order passed by he First Appellate Court is not correct and prays that the criminal revision has to be allowed.

5.The learned counsel for the respondent/complainant submitted that the petitioner has deliberately not appeared before the Lower Appellate Court and the petitioner,who is the accused in this case has to appear before the lower appellate court, but he has not chosen to appear before the lower appellate Court and hence, Non-Bailable Warrant issued against him and the only remedy available to the petitioner is to surrender before the Lower Appellate Court and move an application for grant of bail and prays for dismissal of the criminal revision.

6.Heard both sides and perused the materials available on record.

7.On perusal of the order passed by the First Appellate Court, it is seen that the First Appellate Court required the appearance of both parties. In this case, it was not stated that already compromise was entered into between the parties. No reason was stated for what purpose, the appearance of both the parties is required by the Lower Appellate Court. In the beginning stage of the appeal, it is not necessary for the appearance of both the parties. However, the petitioner stated that due to communication gap between



Lower Appellate Court.

8.It is seen from the records that the petitioner/accused already complied the conditional order passed by the First Appellate Court. The reasons stated by the petitioner in the petition are acceptable and hence, the order passed by the First Appellate Court is not correct and accordingly, it is liable to set aside.

9.In the result, this Criminal Revision is allowed. The impugned order passed by the First Appellate Court is set aside. The First Appellate Court is directed to take up the appeal C.A.No.20 of 2019 and dispose of the same on merits and in accordance with law, after giving opportunity to the parties concerned, within a period of three months from the date of receipt of a copy of this order and report the same to the Registry without fail. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

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To,

1.The Principal Sessions Judge,
Trichy.

2.The Judicial Magistrate No.I, Trichy.

Copy to:

The Section Officer, (2 Copies)
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.T.SENTHIL KUMAR, Advocate (SR-85805[F] dated 09/09/2019

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JMN(11.11.2019) 3P : 6C