

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.07.2020

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.3493 of 2017

T.Vatschala

...Petitioner/Complainant

Vs.

1.R.Kandasamy

2.Nagaraj

3.Tmt.Rajamani

4.Ramasamy

5.Ponnusamy

...Respondents/Accused

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code to set aside the order in CMP No.4694 of 2014 on 28.06.2016 on the file of the learned Judicial Magistrate No.III, Coimbatore and further direct him to proceed with the complaint.

For Petitioner : Mr.M.Saravanakumar
For Respondent : No appearance

O R D E R

This petition has been filed to set aside the order in CMP No.4694 of 2014 on 28.06.2016 on the file of the learned Judicial Magistrate No.III, Coimbatore and further direct him to proceed with the complaint.

2. The learned counsel for the petitioner would submit that the petitioner lodged a complaint against the respondents herein, which was numbered as CMP No.4694 of 2014 on the file of the learned Judicial Magistrate No.III, Coimbatore, for the offence under Sections 406, 417, 420, 465, 469 r/w. 34 IPC alleging that the petitioner and her husband are the subscribers in Priyam Chit Fund Private Limited; and the petitioner's husband became a successful bidder for the amount of Rs.1,50,000/- and he received a sum of Rs.71,000/- as against Rs.1,05,000/- between the period from 10.11.2001 to 25.01.2002 in 15 instalments by the respondents 2 and 3 and the remaining amount of Rs.34,000/- was taken by the respondents as the

subscription of the chit; at the time of obtaining chit amount, the respondents 2 and 3 obtained signatures of the petitioner in blank stamp papers and obtained original title deed and bond papers and other papers; utilizing such signed papers, the respondents had created forged sale agreement and issued notice to the petitioner. Thereafter, the 3rd respondent filed a suit for specific performance in O.S.No.229 of 2003 before the II Additional Subordinate Judge, Coimbatore and the same was dismissed, against which, the 3rd respondent preferred an Appeal in A.S.No.56 of 2006 before the I Additional District Court, Coimbatore. The I Additional District Judge directed the petitioner to refund the advance amount to the third respondent. The learned counsel for the petitioner would further submit that in the CMP No.4694 of 2014, the petitioner deposed her sworn statement, but due to her ill health, she could not appear before the Court on 28.06.2016 and on that day, the learned Magistrate dismissed the petition for default due to non-appearance of the petitioner. The petitioner's non-appearance is neither wilful nor wanton. Prima facie cognizable offence made out from the complaint and documents. Hence, the petitioner seeks for setting aside the dismissal order of the learned Magistrate.

3. Heard Mr.M.Saravanakumar, learned counsel appearing for the petitioner. No representation for the respondents.

4. On perusal of the records it is seen that the petitioner filed a private complaint as against the respondents 1 to 5 herein in the year 2014 and the same was enquired in CMP No.4694 of 2014 and the petitioner did not appear before the trial Court and did not even record her sworn statement. Therefore, her complaint was dismissed for default for the reason that the petitioner did not present for several hearings before the trial Court. The learned Magistrate dismissed the complaint on 28.06.2016. Thereafter, after a period of seven months, the petitioner applied for certified copy and the same is challenged before this Court only on 15.02.2017. Therefore, this Court is not inclined to set aside the order passed by the learned Magistrate. This petition is devoid of merits.

5. Accordingly, the Criminal Original Petition is dismissed. However, the petitioner is at liberty to file fresh complaint on the fresh cause of action.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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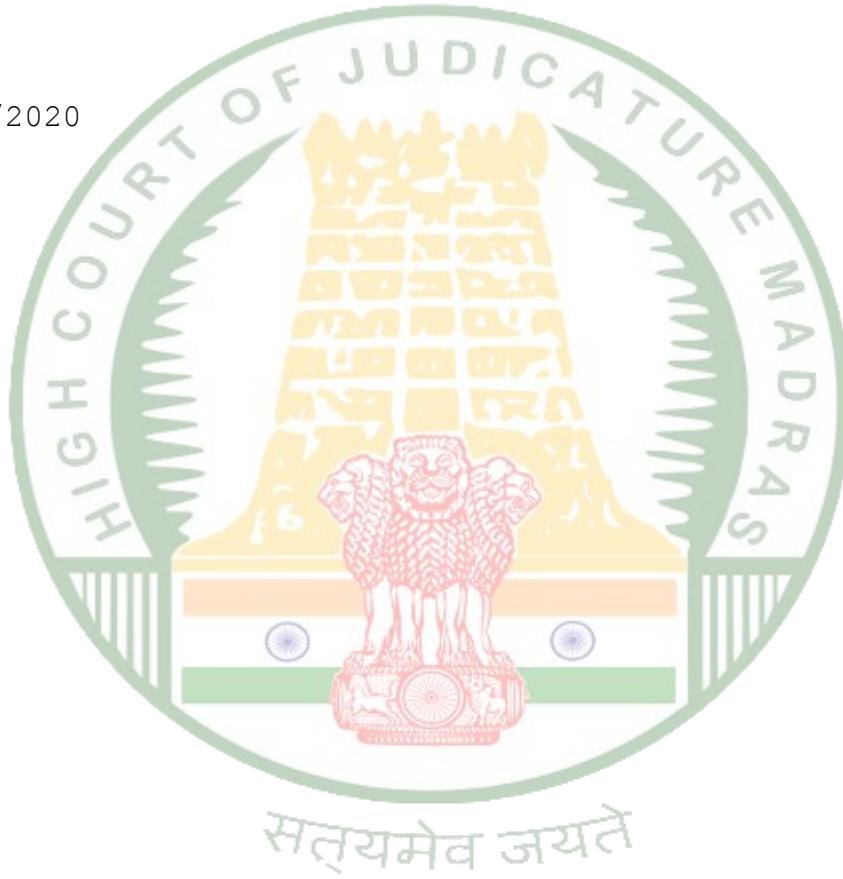
To

1.The Judicial Magistrate No.III,
Coimbatore.

2.The Public Prosecutor,
High Court, Madras.

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