



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12.02.2020

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Cr1.RC(MD)No.878 of 2019

WEB COPY

P.Ramaraj

: Petitioner/Appellant/Complainant

Vs.

M.Kannan

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: Respondent/Respondent/Sole Accused

Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of the Criminal Procedure against the order, dated 13.02.2018 passed by the Principal District and Sessions Judge, Theni, in C.A.No.19 of 2017, by dismissing the same filed against the Judgment passed by the learned Judicial Magistrate(Fast Track), Theni in S.T.C.No.327/2011, dated 11.10.2013.

For Petitioner : Mr.S.Balaji

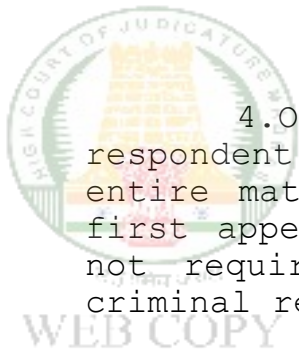
For Respondent : Mr.Joseph Jerry

J U D G M E N T

This criminal revision is directed against the order, dated 13.02.2018 passed by the Principal District and Sessions Judge, Theni, in C.A.No.19 of 2017.

2.The petitioner/complainant filed a complaint against the respondent/accused for the offence under sections 138 and 142 of the Negotiable Instruments Act, which was taken on file as STC No.327 of 2013 by the Judicial Magistrate, Fast Track Court (M.L), Theni. The learned Judicial Magistrate, after full fledged trial, acquitted the respondent/accused from the charge levelled against him. Aggrieved by the judgment of the trial court, the petitioner/complainant preferred appeal before the Principal District and Sessions Judge, Theni, in C.A.No.19 of 2017, which was dismissed for non-prosecution on 13.02.2018. Against which, the present criminal revision is filed by the petitioner.

3.The learned counsel appearing for the petitioner/complainant submitted that the first appellate court dismissed the appeal for non-prosecution and confirmed the findings of the trial court, which is illegal and the first appellate court ought to have given opportunity to the petitioner to defend the case and dispose the appeal on merits. In view of the above circumstances, the petitioner prays that the criminal appeal has to be allowed, by setting the judgment of the first appellate court.



4. On the other hand, the learned counsel appearing for the respondent submitted that the trial court after considering the entire materials available on record, passed the judgment and the first appellate court had also passed the correct order, which do not require any interference by this court and prays that the criminal revision has to be dismissed.

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

6. On perusal of the records, it is seen that the first appellate court has dismissed the appeal for non-prosecution. The first appellate court has not passed the judgment on merits. The first appellate court without considering the facts of the case, has passed the non-speaking order, which is not correct. Hence, this court is of the considered view that the argument put forth on the side of the petitioner stating that the order passed by the first appellate court is not correct, is acceptable. Further, the first appellate court while passing orders has not given an opportunity to the petitioner to defend the case.

7. In view of the above facts, this court is of the considered view that the matter has to be remitted back to the first appellate court for passing orders, on merits and in accordance with law.

8. In the result, this criminal revision is **allowed**. The judgment passed in C.A.No.19 of 2017, dated 13.02.2018 by the learned Principal District and Sessions Judge, Theni, is set aside. The case is remitted back to the first appellate court namely learned Principal District and Sessions Judge, Theni and the first appellate court is directed to dispose of the case in C.A.No.19 of 2017 afresh purely on merits and in accordance with law, after giving reasonable opportunity to the parties concerned, within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (records)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

1. The Principal District and Sessions Judge,
Theni.

<https://hcservices.ecourts.gov.in/hcservices/>



2. The Judicial Magistrate(Fast Track), Theni

+1 CC to Mr.A.JOSEPH JERRY, Advocate (SR-5974[F] dated 12/02/2020)

+1 CC to Mr.S.BALAJI, Advocate (SR-6065[F] dated 13/02/2020)

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