



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl RC(MD)No.795 of 2016

Kathapandian

... Petitioner / Complainant

Vs.

Murugammal

... Respondent / Accused

Prayer : This Criminal Revision Case is filed under Section 397 (1) and 401 of Criminal Procedure Code, to call for the records and set aside the order dated 07.10.2016 passed in C.C No.47 of 2015 on the file of the learned Judicial Magistrate, Ambasamuthiram, Tirunelveli District.

For Petitioner

: Mr.A.Thiruvadi Kumar

For Respondent

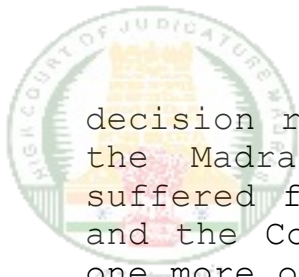
: Mr.R.Alagumani

ORDER

Heard the learned counsel on either side. The petitioner is the complainant in CC No.47 of 2015 on the file of the Judicial Magistrate, Ambasamuthiram, Tirunelveli District. It is a private complaint filed against the respondent for the offence under Section 138 of the Negotiable Instruments Act. The private complaint came to be dismissed for non payment of the process fee on 07.10.2016. Challenging the same, this criminal revision case came to be filed.

2.The learned counsel for the respondent states that the complaint was filed under Section 138 of the Negotiable Instruments Act. Though the complaint was filed in February 2015, for more than one and half years, the process fee was not paid. The learned counsel who appeared for the complainant before the court below said to have stated that he has no instructions. Therefore, he submits that the impugned order dated 07.10.2016 dismissing the complaint on this ground does not deserve to be interfered with.

3.Though the conduct of the petitioner cannot be appreciated, I am of the view that the petitioner can be granted one more opportunity to prosecute and pursue her complaint. In the



decision reported in 1996 (2) CTC 555 (Elumalai vs. K. Sukumar), the Madras High Court held that the impugned order therein suffered from illegality and the same was liable to be set aside and the Court had remanded the matter to the trial Court to give one more opportunity to the petitioner to pay process fees.

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4.The case of the complainant is that the accused had availed a sum of Rs.5.00 lakhs from him and issued a cheque the amount being a substantial one. It is also seen that the complainant has issued a statutory notice dated 09.02.2015 and the same was returned unclaimed. Since a substantial sum is involved, this is definitely a case in which the interest of justice requires that the petitioner should be granted one more opportunity. In this view of the matter, the order impugned in this criminal revision case is set aside. C.C No.47 of 2015 is restored to the file of the learned Judicial Magistrate, Ambasamuthiram, Tirunelveli District. The learned Judicial Magistrate is directed to dispose of the matter on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order. If the records have been received from the court below, the Registry shall return the same to the concerned court immediately and without any delay.

5.This criminal revision case is allowed as indicated above.

Sd/-

Assistant Registrar ()

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/ /2020

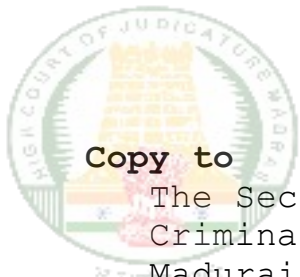
Sub Assistant Registrar(CS)

Skm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Judicial Magistrate,
Ambasamuthiram,
Tirunelveli District.

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



Copy to

The Section Officer-2 copies
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

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+1 CC to Mr.A.THIRUVADI KUMAR, Advocate (SR-23947[F] dated
04/12/2020)

Cr1 RC(MD)No.795 of 2016
02.12.2020

SJ(CO)
KM (21.12.2020) 3P 5C