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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.11.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.22165 of 2017 &
Crl.M.P.No.13041 of 2017

K.S.Mahalingam (Died)

1. Madhammal
2. Lavanyashree
3. Arikeshwaran

... Petitioners

(Petitioners 1 to 3 substituted vide
order of this Court dated 30.11.2021
made llin Crl.M.P.No.12463 of 2021)

Versus

S.V.Vijayakumar
Prop. Saravan Dyeing
S/o. Venkatachalam
Servarayanpalayam
Near Bus Stop
Kadayapatti Post
Bhavani Taluk
Erode District

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of
Cr.P.C. to set aside the order dated 15.09.2017 made in
C.M.P.No.353 of 2017 in STC No.10 of 2017 on the file of II
Additional District Munsif Court, Bhavani.

For Petitioners ... Mr.R.Prabakar

For Respondent ... Mr.N.Manokaran

O R D E R

This Criminal Original Petition has been filed
challenging the order passed by the learned Magistrate
C.M.P.No.353 of 2017 filed under Section 311 Cr.P.C to file
additional documents, namely the postal receipt and dishonoured
memo.

2. Heard the learned counsel for the petitioner and the
learned counsel appearing on behalf of the respondent.



3. The crux of the complaint is that the respondent herein availed a loan from the petitioner (deceased) and issued a cheque dated 16.10.2014 towards discharge of the loan and when the said cheque was presented for encashment, the same was dishonoured and returned with an endorsement "Funds Insufficient" and hence a private complaint was filed under Section 138 of the Negotiable Instruments Act read with 200 of Cr.P.C.

4. The learned counsel for the petitioners submits that the original petitioner could not file the postal receipt and the dishonoured memo at the time of filing the complaint and therefore, he filed an application before the learned Magistrate under Section 311 Cr.P.C, however the learned Magistrate, without even assigning valid reason, dismissed the application and hence the present application has been filed for setting aside the dismissal order.

5. This Court is of the view that the ultimate object of the Court is to see that all the relevant materials to establish the case is brought on record. Merely because there is some delay in filing the application, the same cannot be a ground to shut the parties from producing the relevant papers before the Court of law. What was sought to be filed before the Court are the postal receipt and the dishonoured memo, which are vital to establish the case. This Court is of the view that the reason assigned by the learned Magistrate for dismissing the application is not sustainable and the same cannot be a reason to non-suit the petitioner in a proceedings initiated under Section 138 of the Negotiable Instruments Act and apart from the delay, no other specific reason was assigned.

6. In such view of the matter, this Court is of the view that the order passed by the Magistrate is liable to be set aside and accordingly, set aside.

7. In the result, this Criminal Original Petition is allowed and the order passed by the Magistrate dated 15.09.2017 in C.M.P.No.353 of 2017 in S.T.C.No.10 of 2017 is set aside and the substituted parties shall be examined as witnesses and documents shall be filed within a period of one month and the accused will have his right of cross-examination the witnesses. Thereafter, the trial Court shall dispose of the case within a period of six months.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar



gpa/gba

To

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1. II Additional District Munsif Court
Bhavani

+1cc to Mr.N.Manokaran, Advocate, S.R.No.62709

+1cc to Mr.R.Prabakar, Advocate, S.R.No.62838

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SVI (CO)
CT/17/12/2021