



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CrI.R.C.(MD) No.46 of 2017
and
CrI.M.P.(MD) No.470 of 2017

Jeevamani Dharmaraj

... Petitioner

vs.

P.Sudalai

... Respondent

Prayer:- This Criminal Revision Case filed under Section 397(1) r/w 401 of the Code of Criminal Procedure, to set aside the order dated 28.12.2016 passed in Cr.M.P.No.6530 of 2016 on the file of the learned Judicial Magistrate No.1, Thoothukudi, Thoothukudi District.

For Petitioner : Mr.A.Thiruvadikumar

For Respondent : No appearance

ORDER

This Criminal Revision Case has been filed to set aside the order passed in Cr.M.P.No.6530 of 2016, dated 28.12.2016 on the file of the learned Judicial Magistrate No.1, Thoothukudi, Thoothukudi District.

2.The learned counsel for the petitioner submitted that in order to wreck vengeance, the respondent herein had preferred a private complaint before the Court of the learned Judicial Magistrate No.1, Thoothukudi against the petitioner and summons were issued to the petitioner herein. He further submitted that the petitioner was serving as Sub Inspector of Police at Thoothukudi South Police Station and he had not attended the Court on the date of first hearing as mentioned in the summon and he engaged a counsel, Mr.Vijay.

3.Mr.Vijay, learned counsel filed a petition in Cr.M.P.No.6530 of 2016 under Section 317 of Cr.P.C., before the Court of the learned Judicial Magistrate No.1, Thoothukudi to condone the absence of the petitioner/accused along with a memo of appearance for the petitioner/accused. However, the learned Magistrate had dismissed the said petition on 28.12.2016 and issued a Non Bailable Warrant against the petitioner. Challenging the same, the present revision case had been filed.



4.It is the contention of the learned counsel for the petitioner that Section 317 of Cr.P.C., never says that the accused shall appear before the Court below on the first date of hearing. It says only that the accused may appear through a counsel on the date of first hearing. Section 317 of Cr.P.C., states that under any circumstances, when the accused is prevented from appearing before the Court by any cause, the learned counsel can file a petition to condone the absence of the petitioner.

5.When the provision of Section 317 of Cr.P.C., states that the accused shall file a petition to condone his absence, the learned Judicial Magistrate had ignored the provisions of law and dismissed the petition filed by the petitioner herein. Therefore, the accused/the petitioner herein had approached this Court by way of filing the present revision to set aside the order passed in Cr.M.P.No.6530 of 2016, dated 28.12.2016 on the file of the learned Judicial Magistrate No.1, Thoothukudi, Thoothukudi District.

6.Heard the learned counsel on either side and records perused.

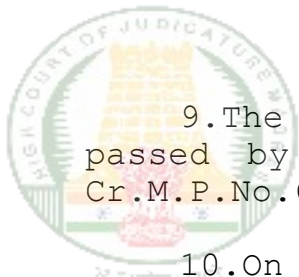
7.At this stage, it is useful to rely upon the provisions of Section 317 of Cr.P.C., which is extracted as follows:-

317. Provision for inquiries and trial being held in the absence of accused in certain cases.

(1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

8.From reading of Section 317 of Cr.P.C., it is found that it does not say that the accused shall appear before the Court for the first hearing date, but it says that if the accused in any such case is not represented by a pleader, he may either adjourn such inquiry or trial.



9.The point for consideration in this case is whether the order passed by the learned Judicial Magistrate No.1, Thoothukudi in Cr.M.P.No.6530 of 2016, dated 28.12.2016 is to be set aside.

10.On consideration of the arguments putforth by the learned counsel for the petitioner and in the light of the provisions of Section 317 of Cr.P.C., the impugned order passed by the learned Judicial Magistrate No.1, Thoothukudi, in Cr.M.P.No.6530 of 2016, dated 28.12.2016 is found to be unacceptable and unreasonable. Therefore, the same is liable to be set aside and the point for consideration is answered in favour of the petitioner herein and against the respondent herein.

11.In the result, this Criminal Revision Case is allowed. The impugned order passed by the learned Judicial Magistrate No.1, Thoothukudi, in Cr.M.P.No.6530 of 2016, dated 28.12.2016 is set aside. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate No.1,
Thoothukudi.

Copy to
The Section Officer,Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

Cr1.R.C. (MD) No.46 of 2017
27.04.2021

mj (CO)
TR(18.06.2021) 3P 4C