

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Cr1.R.C.No.576 of 2019

A.Dayalan

..Petitioner

Vs

Selva

..Respondent

Prayer : Criminal Revision Case filed under Section 397 read with 401 Cr.P.C, to set aside the dismissal order passed by the learned Judicial Magistrate -3, Salem in STC.No.887 of 2016 dated 24.08.2018.

For the Petitioner : Mr.S.Muthiah
for Mrs.D.Sujatha

For the Respondent : No Appearance

O R D E R

This revision is filed as against the judgment of the learned Judicial Magistrate-III, Salem in STC.No.887 of 2016 dated 24.08.2018 which reads as follows:

"Complainant absent, no representation. Process not paid. This case is pending from the year 2016. Today, this case is posted for payment of process to issue summons to accused as last chance. Process not paid. Already sufficient opportunity given. Process not paid. Therefore, this Court is dismissed this complaint for non-payment of process as per Section 204(4) of the CrPC.

Pronounced by me in open Court this the 24th day of August 2018."

2. Before this Court, in the same address, notice was served in the CMP for condonation of delay and the respondent / accused entered appearance through learned counsel also. However, again when notice was issued in the main criminal revision, repeatedly, the same is returned as door locked, even though the return cover says intimation delivered.

3. Learned counsel for the petitioner / complainant would submit that the accused is residing in the same address and in spite of intimation being delivered, he is refusing to receive the notice. On perusal of the above facts, the service is treated as complete.

4. This is a case, in which the complainant was absent on the date of hearing and since process fee was also not filed, the Trial Court has dismissed the complaint for default. However, since the order does not read that the accused is acquitted, in this case, learned counsel would submit that the appeal against acquittal was not filed and hence it is filed as a revision. Be that as it may, learned counsel would submit that the process fee was paid on the earlier occasion and on the day of hearing unfortunately, the complainant could not reach the Court in time and therefore, he should be given an opportunity to prosecute his case on merits.

5. Considering the conduct of the accused before this Court and considering the above pleadings of the petitioner / complainant, this Court is of the view that one more opportunity is to be given to the complainant to take process and to effect the service on the accused and prosecute his case on merits and accordingly, this revision is allowed on the following terms:

i. The impugned judgment of the learned Judicial Magistrate III dated 24.08.2018 in STC.No.887 of 2016 stands set aside;

ii. STC.No.887 of 2016 stands restored to the file of the learned Judicial Magistrate III, Salem and the next date of hearing is fixed as 21.07.2022, on which date, the complainant shall appear before the Trial court without fail and also take steps by way of filing the process for service on the accused as may be ordered by the learned Judicial Magistrate III, Salem without fail and cooperate for the further hearings of the case.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate -3, Salem.

2.The Chief Judicial Magistrate, Salem.

3.The Public Prosecutor, High Court of Madras.

+1cc to M/s.D.Sujatha, Advocate SR. No. 39661

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SKM (CO)
PR (11/07/2022)