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Crl.O.P.No.22614 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.No.22614 of 2022

Dhanalakshmi

... Petitioner

Vs.

A. Sathishkumar

... Respondent

Prayer : The Criminal Original Petition is filed under Section 482 Cr.P.C. to set aside the order dated 22.04.2022 made in C.M.P.SR.No.11066 of 2022 in C.R.P.No.25 of 2021 on the file of District Sessions Judge, Salem.

For Petitioner

... Mr. V.Nithyanandam

ORDER

This Criminal Original Petition is filed to set aside the order dated 22.04.2022 made in C.M.P.SR.No.11066 of 2022 in C.R.P.No.25 of 2021 on the file of District Sessions Judge, Salem.



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2. Learned counsel appearing for the petitioner submitted that the petitioner was convicted by the learned Judicial Magistrate Court, Vazhapadi, Salem District in STC.No.957 of 2019. Aggrieved by that conviction, the petitioner filed CRP.No.25 of 2021 before the District Sessions Court, Salem, which was dismissed on 01.04.2022 for non appearance of the petitioner. Aggrieved by the above said order, the petitioner filed an application to restore the revision petition and the same was returned with an endorsement, which reads as below:

“This petition to be filed proper Court. Not restore the Criminal side once dismissed on 01.04.2022. Hence no jurisdiction this Court. Return time 4 weeks.”

3. Learned counsel for the petitioner further submitted that the case has to be taken on file by the Court for restoration and to be decided on merits. Without deciding the case on merits, returning of the restore application is unsustainable in seeking to set aside the order and the revision may be restored on file and disposed of on merits.



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4. Considered the rival submissions of the learned counsel for the petitioner and perused the records.

5. On perusal of records, it is revealed that the petitioner is an accused in STC.No.957 of 2019 on the file of learned Judicial Magistrate, Vazhapadi, Salem District. The petitioner was prosecuted by the respondent / complainant for the offence under Section 138 of Negotiable Instruments Act. After trial, the petitioner was convicted by the trial Court. Aggrieved by this conviction, she preferred a revision before the District Sessions Court, Salem in C.R.P.No.25 of 21 and the same was dismissed for default on 01.04.2022 for non appearance of the petitioner. Thereafter, the petitioner filed an application to restore the revision petition in C.R.P.No.25 of 21 which was returned by the learned Principal Sessions Judge, with the above said said endorsement.

6. Under these circumstances, returning the restoration petition by the learned Principal Sessions Judge, is unsustainable and the same has to be restored and decided on merits.



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7. I accept the contention of the learned counsel for the petitioner. Since the revision petition is pending before the same Court, returning the restoration petition to be filed before the appropriate Court is unsustainable and also, the revision is not decided on merits. Under these circumstances, a fair opportunity has to be given to the revision petitioner to place her case before the Court and it cannot be rejected. Therefore, the order passed in C.M.P.SR.No.11066 of 2022 in C.R.P.No.25 of 2021 by the learned Principal Sessions Judge is hereby set aside and the Principal Sessions Court is hereby directed to restore the C.R.P.No.25 of 2021 and dispose of it within a period of one month from the date of receipt of copy of this order.

27.10.2022

AT

Index : Yes/No

Internet : Yes/No

Note: Issue order copy on 28.10.2022



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V.SIVAGNANAM ,J.

AT

To
1.The District Sessions Judge, Salem.

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