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Crl.R.C.Nos.1212 and 1265 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.Nos.1212 and 1265 of 2017

T.Thyagarajan

... Petitioner in
Crl.R.C.No.1212 of 2017

Sri Venkateshwara Gran
Proprietor A.Sadhasivam, M/37,
Son of Ammasi
Mettur, Koonur Post
Mettur Taluk.

...Petitioner in
Crl.R.C.No.1265 of 2017

Vs.

1.S.FAB Company
Represented by its partners
A.Saravanan and Senthil Kumar
Chinnakoonur
Koonur East Post
Mettur Taluk.

2.Senthilkumar
Partner of S.FAB

3.A.Saravanan (Died)
Partner of S.FAB

... Respondents in both
Crl.R.Cs



Crl.R.C.Nos.1212 and 1265 of 2017

COMMON PRAYER: Criminal Revisions have been filed under Section 397 & 401 of the Code of Criminal Procedure, to set aside the orders dated 21.03.2017 and 23.03.2017 made in S.T.C.Nos.1124 and 1168 of 2011 on the file of the Judicial Magistrate No.II, Mettur.

For Petitioner
in both Crl.R.Cs : Mr.T.Gopinathan
for M/s.D.Lakshmipathy
For R2
in both Crl.R.Cs : No Appearance

COMMON ORDER

Both the Criminal Revision cases have been filed challenging the orders passed in S.T.C.Nos.1124 and 1168 of 2011 on 21.03.2017 and 23.03.2017 respectively. Since, the issue is one and the same in both the petitions, these cases are disposed by way of this common order.

2.The petitioners herein are the complainants who had filed the petition under Sections 138 and 142 of Negotiable Instruments Act read with section 200 of Cr.P.C. against the respondent in the year 2011. According to the petitioners, the chief examination has been completed and documents were marked. The accused/respondents are not co-operating with the trial and frequently, petition under Section 317 of Cr.P.C has been filed. Finally,



bailable warrants have been issued against the accused and the case has been kept pending without any progress. The trial Court by the impugned order dated 23.03.2017 in S.T.C.No.1168 of 2011 has recorded as follows;

“ Notice not returned & deemed to be served Inspite of service of notice complainant has not appeared before this court bailable warrant pending. Hence the complaint is dismissed.”

3.The learned counsel for the petitioners submitted that on the fateful day, the complainants and their counsel were not present before the trial Court. The trial Court ought to have adjourned the case to the next hearing, since the bailable warrant was pending against the accused and it was only a formal hearing. On the contrary, by dismissal of the complaint, the complainant is denied justice. Hence, he prayed to set aside the impugned order and to restore the STC Nos.1124 and 1168 of 2011 back to the learned Judicial Magistrate No.II, Mettur.

4.Notice to the respondents are dispensed with since the respondents have not appeared before the trial Court and the dismissal orders have been passed on technical grounds. Keeping the revisions pending without any



progress, would amount to further delay of the case. Taking note of the fact that no prejudice would be caused to the respondents/accused, this Court preferred to pass this order.

5.Considering the fact that in both the cases,ailable warrant were pending against the accused and the absence of the complainant would no way affect the progress of the case, this Court find that for the absence of the complainant, the case is not delayed. It was only a formal hearing. The petitioners / complainants to take steps to execute theailable warrant. In view of the long pending, the Trial Court to take coercive action through the Jurisdictional Police to secure the presence of the accused.

6.In view of the same, this Court finds that the impugned orders passed by the Trial Court are not sustainable and hence they are set aside. The trial Court is directed to restore both the cases in S.T.C.Nos.1168 & 1124 of 2011 on the file and dispose of the said cases within a period of three (3) months from the date of receipt of a copy of this order.



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7. Accordingly, the Criminal Revision Cases are allowed.

12.12.2022

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

dk

To

The Judicial Magistrate No.II.

Mettur.



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M.NIRMAL KUMAR, J.

dk

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