



Crl.R.C.No.346 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.346 of 2020

R.Nagulan

.. Petitioner

Vs.

A.Sasikumar

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to allow this revision petition and set aside the order dated 29.11.2019 passed by the learned Judicial Magistrate, Uthangarai in S.T.C.No.145/2014 and restore the same.

For Petitioner : Mr.N.S.Sivaraj

ORDER

This Criminal Revision Case is filed by the complainant under Section 138 of Negotiable Instruments Act, being aggrieved by the order of Judicial Magistrate dismissing the complaint for non prosecution. The private complaint was taken on file on 25.08.2014.



Crl.R.C.No.346 of 2020

2. After much persuasions and issuance ofailable warrant the accused has been secured and trial commenced on 05.12.2018. When PW.1/the complainant mounted in the witness box and marked 5 exhibits, thereafter, adjourned for cross examination. The accused did not cross examine the complainant for nearly one year. Thereafter, againailable warrant was issued against the accused and the same was pending. The docket entry indicates that the Court has addressed to the Deputy Superintendent of Police and Station House Officer, Uthangarai about theailable warrant against the accused on 07.11.2019 and awaiting for execution ofailable warrant. However, on 29.11.2019, when the matter was taken up for consideration, there was no representation on either side. Therefore, the Trial Court has dismissed the complaint for non prosecution under the impression that the complainant has not taken steps to execute theailable warrant against the accused.

3. The said order of dismissal is challenged before this Court. Though the revision petition filed in the year 2020, few days prior to break down of COVID, the notice was not served on the respondent,



Crl.R.C.No.346 of 2020

steps to serve notice to the respondent not taken till date. Over all on saying the docket entries and the impugned order, this Court finds that there is an illegality apparent on the face of the order passed by the Trial Court. Firstly, the complainant has taken steps for issuance of bailable warrant and the same was pending for execution. Secondly, the complainant, who has filed the complaint in the year 2014 been substantially attending the Court personally or through counsel for nearly 6 years. His right to pursue the complaint cannot be denied or deprived because he was not present on a particular day. By dismissing the complaint on the ground that the complainant has not taken steps to execute the bailable warrant, a wrong signal for the person, who stay away from the trial and evade the process of trial. Since the accused had not appeared before the Trial Court for more than a year prior to the dismissal of the complaint, though the case has been adjourned from time to time atleast for 25 hearings, this Court is of the view that there is gross miscarriage of justice occurred in this case.

Dr.G.JAYACHANDRAN, J.



Crl.R.C.No.346 of 2020

WEB COPY

rpl

4. Hence, this *Criminal Revision Case is allowed*. The Trial

Court is directed to restore the complaint on file and cause notice to the respondent failing which, take coercive steps for his appearance and permitting him to cross examine the complainant, since the chief has already recorded and marked documents, the trial shall get completed within three months from the date of receipt of a copy of this order.

06.04.2023

Internet : Yes/No

Index: Yes/No

rpl

To

The Judicial Magistrate, Uthangarai.

Crl.R.C.No.346 of 2020