



CrI.A(MD)No.560 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated:25.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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G.Thangammal

..Appellant/Third Party

2.Dhanalakshmi

3.Malarvizhi

.. Appellants

[Appellants 2 &3 are impleaded as per
the order of this Court dated 23.06.2021
in CrI.M.P(MD)No.3146 of 2021]

Vs.

S.Subbiah

.. Respondent /Accused

PRAYER: Criminal Revision filed under Section 378 of the Criminal Procedure Code, to call for the records relating to the order dated 05.10.2018 in C.C.No.128 of 2017 on the file of the learned Judicial Magistrate No.I, Dindigul and set aside the same.

For Appellant : Mr.N.Madhava Govindan

For Respondent : Mr.M.Manikandan



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ORDER

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The appellant, who is the complainant in C.C.No.128 of 2017 on the file of the learned Judicial Magistrate No.I, Dindigul, filed this appeal to set aside the impugned order dated 05.10.2018.

2. According to the appellant, the respondent borrowed money for a sum of Rs.6,00,000/- from Govindaraj. Hence, to discharge the said amount, the respondent is said to have given a cheque. The said cheque was presented before the appellant Bank and the same was returned with an endorsement “insufficient fund”. Thereafter, the appellant issued statutory notice and the reply also sent by the respondent. After that, the appellant filed the complaint under Section 138 of the Negotiable Instruments Act r/w 141 of Negotiable Instruments Act and the same was taken on file in C.C.No.128 of 2017. Pending the same, the case was posted for hearing on 05.10.2018. On the day, the learned counsel for the complainant/appellant herein filed a memo stating that the complainant had died on 23.09.2018. Hence, the learned trial Judge passed the following order:

“Both are absent. Accused side under Section 317 Cr.P.C, petition filed and allowed. Complainant side memo filed and stating that complainant was died on 23.09.2018



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for which memo filed and recorded. Further complainant side has not seeking any time for further proceedings. Hence, in the interest of justice and to avoid the waste of public money accused is acquitted under Section 256 Cr.P.C.”

3. Challenging the same, the wife of the said Govindaraj, namely, Thangammal filed the above appeal before this Court with delay. During the pendency of the delay petition, the said Thangammal also died. Hence, these two legal heirs namely, the present appellants are impleaded. After condonation of delay, the appeal got numbered and posted for admission today.

4. The learned counsel for the appellants as well as the respondent are present. The learned counsel for the appellant submitted that the trial Court, without giving any further time to implead the legal heirs of the complainant, passed the order on the same day. According to the appellant, the case is involvement of the issuance of the cheque to discharge a sum of Rs.6,00,000/-. Hence, he prayed that in the interest of justice, C.C.No.128 of 2017 has to be disposed on merits.



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5. The learned counsel for the respondent submitted that eventhough the complainant died on 23.09.2018, they did not take any steps to implead the legal heirs. Hence, the trial Judge correctly dismissed the appeal on the next hearing date ie., on 23.09.2018. Therefore, he seeks for dismissal of this petition.

6. This Court has considered the rival submissions made by both parties and perused the materials available on record.

7. The Complainant died on 23.09.2018, ie., before the date of hearing on 05.10.2018. Therefore, the learned counsel on record filed memo dated 05.10.2018 disclosing the death and seeks time to implead the legalheirs. The learned trial Judge, without giving adequate opportunity to implead the legal heirs under Section 394 Cr.P.C, dismissed the complaint under Section 256 Cr.P.C. Even on the date of dismissal, the time period fixed to implead as per Section 394 Cr.P.C is not expired. Therefore, the learned trial Judge committed error of law in dismissing the complaint under Section 256 Cr.P.C. So, the impugned order is liable to be set aside.



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8. Accordingly, the impugned order dated 05.10.2018 in C.C.No.128 of 2017 passed by the learned Judicial Magistrate No.I, Dindigul is set aside and the learned Judicial Magistrate No.I, Dindigul is directed to restore the case in C.C.No.128 of 2017 and conduct the trial after impleading the necessary legal heirs and pass orders on merits.

9. With the above direction, this criminal appeal stands allowed.

25.07.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
PJJ

To
The Judicial Magistrate No.I,
Dindigul.



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K.K.RAMAKRISHNAN, J.

PJL

**Order made in
CrI.A(MD)No.560 of 2023**

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