



CrI.R.C.(MD).No.990 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :05.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.RC.(MD).No.990 of 2023

R.Nagapradeep

... Petitioner

Vs.

D/Sumiltan

... Respondent

PRAYER: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records of CrI.M.P.(MD).No.5069 of 2021, dated 12.09.2022 on the file of the Judicial Magistrate Court No.I, Dindigul and set aside the same and consequently to direct the learned trial judge to number the petitioner's un numbered complaint dated 08.03.2021.

For Petitioner : Mr.S.Karthik

For Respondent : Mr.V.Malaiyendran



CrI.R.C.(MD).No.990 of 2023

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ORDER

This Criminal Revision Case has been filed against the impugned order dated 12.09.2022 in CrI.M.P.No.5069 of 2021 on the file of the learned Judicial Magistrate No.I, Dindigul.

2. The revision petitioner is the friend of the respondent. The respondent borrowed a sum of Rs.15,00,000/- from the petitioner on 20.10.2020, to meet his urgent family and business expenses. The respondent also issued a cheque dated 20.11.2020 to discharge the said debt. The petitioner presented the cheque on 31.12.2020, in his bank namely, the State Bank of India, Balakrishnanapuram Branch Dindigul Town. The same was dishonoured. Therefore, he issued a legal notice on 05.01.2021, to the respondent. The respondent issued a reply notice denying the receipt of the amount. Therefore, the petitioner filed a complaint before the learned Judicial Magistrate No-I, Dindigul under Section 138 of Negotiable Instruments Act with a condone delay petition in CrI.M.P.No.5069 of 2021. to condone the delay 15 days in filing the complaint.



CrI.R.C.(MD).No.990 of 2023

WEB COPY

3. The learned trial Judge, after hearing the respondent, condoned the delay with condition of payment of Rs.2,000/- to the respondent on or before 26.08.2022 with further direction to sworn the affidavit and comply the condition under section 88 of the Cr.P.C., Due to his mother's il-health, he got mental depression and hence he admitted in the Velammal Hospital Madurai and took treatment up to the first week of September 2022. Hence, he is under depression and hence he has not appeared on that day. As a sequel, the learned Judicial Magistrate dismissed the petition by passing the impugned order dated 12.09.2022. Challenging the same, the petitioner filed this revision case.

4. The learned counsel for the petitioner submitted that the petitioner was admitted in the hospital and he has taken treatment up to the first week of September 2022 and produced the document to prove the same. He further submitted that the cheque amount is Rs.15,00,000/-. The adjudication has to be decided on merits. Without any false explanation, the petitioner furnished the *bona fide* reason to condone his absence on the date



CrI.R.C.(MD).No.990 of 2023

of the hearing and failed to comply with the direction of the learned trial Judge. To provide the opportunities, in the interest of justice, this revision may be allowed.

5. The learned counsel for the respondent submitted that the petitioner did not furnish the acceptable reason to restore the dismissal order passed by the learned trial Judge. The learned trial Judge, after giving adequate opportunities, dismissed the complaint and hence, he seeks for the dismissal of the revision with confirmation of the order passed by the Court below.

6. This Court considered the rival submissions made on either side and perused the materials available on record.

7. Admittedly, the petitioner filed a complaint with a delay petition to condone the delay of 15 days. The same was allowed by the learned trial Judge on 16.08.2022 with condition to pay the cost of Rs.2,000/- and also directed to file a bond as required under Section 88 of



CrI.R.C.(MD).No.990 of 2023

Cr.P.C., the petitioner filed documents to show that he was admitted in Velammal Hospital for emotional disorder. The doctor advised to stay at the hospital and take treatment as inpatient. Due to the emotional disorder, the petitioner was unable to concentrate any other matters. Therefore, he was unable to appear before the trial Court on 12.09.2022. The said explanation is not seriously disputed by the learned counsel for the respondent. This Court also independently assessed the medical certificate produced by the petitioner. In this case, the petitioner filed a complaint under section 138 of the Negotiable Instruments Act for the dishonour of cheque issued by the respondent for the tune of Rs.15,00,000/- to discharge his debt. Therefore, the adjudication has to be decided on merits. Considering the overall circumstances, this Court is inclined to allow this Criminal revision with the following directions:

(i) The order passed by the learned trial Judge dated 12.09.2022 in Cr.M.P.No.5069 of 2021, is hereby set aside with a condition to pay Rs.5,000/-(Rupees Five Thousand Only) to the respondent within a period of two weeks from today.



CrI.R.C.(MD).No.990 of 2023

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(ii) The petitioner is directed to appear before the learned trial Judge on 20.09.2023, and on that day, the learned trial Judge hereby directed to take cognizance on the complaint filed by the petitioner upon verifying the payment of cost and complete the trial within a period of eight months from the date of the submission of the acknowledgement of payment of the costs by the petitioner.

(iii) This Court directed the respondent to make appearance without awaiting for further summons from the Court below by making his appearance and both the parties are hereby directed to co-operate for the early disposal of the trial proceedings within a period specified above.

05.09.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
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Note: Issue order copy on 07.09.2023.



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Crl.R.C.(MD).No.990 of 2023

K.K.RAMAKRISHNAN, J.

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Crl.R.C.(MD).No.990 of 2023

05.09.2023