



Crl.O.P(MD) No.12848 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :14.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.O.P(MD) No.12848 of 2020

Mohammed Siddiq

... Petitioner

Vs.

1. The Inspector of Police
Cumbum North Police Station
2. The Deputy Superintendent of Police
CBCID Police
Plot No.9, Arasu Nagar
Behind Duraiappa Ginning Factory
Palanichettipatti
Theni District
3. The Inspector or Police
CBCID Police
Plot No.9, Arasu Nagar
Behind Duraiappa Ginning Factory
Palanichettipatti
Theni District

..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to set aside the order of dismissal for default passed in Crl.R.P.No.17 of 2017 on 11.03.2020 on the file of the learned Principal District Judge, Theni and consequently restore it on file on the file of the learned Principal Sessions Judge, Theni for disposal on merits

For Petitioner : Mr.K.K.Samy

For Respondents : Mr.R.M.Anbunithi
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed to set aside the order of dismissal for default passed in Crl.R.P.No.17 of 2017 on 11.03.2020 on the file of the learned Principal District Judge, Theni and consequently restore it on file.

2. The contention of the petitioner is that he has filed Crl.R.P. No. 17 of 2017 on the file of the learned Principal Sessions Judge, Theni to set aside the order passed in Cr.M.P. NO.711 of 2012 dated 27.05.2017. When the matter came up for hearing on 11.03.2020 the learned Principal Sessions Judge, Theni had dismissed the case for default for non appearance of the petitioner. The reason given by the petitioner for his non appearance is that since he was taking treatment for his ailments on that date he was unable to appear before the trial Court, thereby the learned Principal Sessions Judge, Theni has dismissed the application.

3. The learned Additional Public Prosecutor appearing for the respondents contended that the petition filed in Cr.M.P. No.711 of 2012 itself is not maintainable and already the case was closed and as against the closure report the petitioner filed this petition for further investigation and the same was correctly dismissed by the trial Court and



as against the above said order the petitioner filed Crl.R.P.No.17 of 2017 on the file of the learned Principal Sessions Judge, Theni and they wantonly left the matter without arguing the case, therefore the order passed by the trial Court is correct and this petition is liable to be dismissed.

4. Heard both sides and perused the materials available on record.

5. The prayer of the petitioner is limited and on the date of hearing before the learned Principal Sessions Judge, Theni the petitioner was not able to attend the case due to his illness. The said reason is acceptable and further once the case is posted for hearing instead of dismissing the case the court has to pass orders on merits with available records. As per Section 403 of Cr.P.C, it is the option of Court to hear parties, which reads as follows:

“ Save as otherwise expressly provided by this Code no party has any right to be heard either personally or by pleader before any Court exercising its powers of revision; but the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader”

6. As per Section 403 of Cr.P.C., the revision petition has to be decided on merits based on the available records. Therefore the order passed by the learned Principal Sessions Judge, Theni in dismissing the



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petition for default is liable to be set aside and the matter is remanded back to the learned Principal Sessions Judge, Theni for fresh hearing on merits.

7. Accordingly this Criminal Original Petition is allowed.

14.09.2023

Index : Yes / No
Internet : Yes / No
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To

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4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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