



CRL.A(MD).No.692 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATE : 08.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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M.Sekaran (Deceased)

S.Shivasankar ... Petitioner/ L.R. of the deceased Complainant

Vs.

K.Umadevi ...Respondent/Accused

Prayer : This Criminal Appeal is filed under Section 378 (4) of Cr.P.C., to call for the records relating to the order passed by the learned Judicial Magistrate No.V, Tiruchirapalli, in C.C.No.215 of 2017 dated 04.11.2022 by acquitting the accused under section 256 of Cr.P.C. and set aside the same and allow this appeal.

For Appellant : Mr.G.S.Asok Adhithyan

For Respondent : Mr.R.Rajaraman



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JUDGMENT

This Criminal Appeal has been filed to set aside the order passed by the learned Judicial Magistrate No.V, Tiruchirapalli, in C.C.No.215 of 2017 dated 04.11.2022.

2. The case of the prosecution is that the respondent borrowed a sum of Rs.10,00,000/- from the deceased petitioner/complainant on 14.09.2011. To discharge the said debt, she issued two cheques for Rs.15,80,000/- on 14.02.2014. The deceased petitioner/complainant presented the said cheques before his Banker on 06.03.2014 and the same was returned with an endorsement “Insufficiency of Funds”. So, the deceased petitioner/complainant issued the legal notice on 17.03.2014. Even though the respondent/accused received the same on 19.03.2014, she neither repaid the loan amount nor sent any reply notice to the deceased petitioner. In such circumstances, the deceased petitioner filed a complaint under Section 138 Cr.P.C., before the learned Judicial Magistrate No.V, Tiruchirapalli. The learned Judicial Magistrate took the complaint on file in C.C.No.215 of 2017. Since there was no appearance on the side of the respondent/accused, the learned trial Judge issued bailable warrant against



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the accused in CMP.No.6817 of 2017 dated 27.12.2017. Then, the respondent/accused preferred a petition in CrI.OP(MD)No.17895 of 2017, before this Court, seeking quashment of C.C.No.215 of 2017. Again, there was no appearance on the side of the respondent/accused and the said petition was dismissed for non-prosecution on 04.03.2021. While the pendency of the proceedings in C.C.No.215 of 2017, during the pandemic period, the original complainant namely, Sekaran passed away on 31.05.2021. Under these circumstances, on 04.11.2022, the learned trial Judge dismissed the said C.C.No.215 of 2017 on the ground that no steps were taken for impleading the legal heirs of the deceased petitioner and acquitted the respondent/accused. Challenging the same, the son of the deceased petitioner/complainant preferred this appeal.

3. The learned counsel for the petitioner submitted that due to the Covid-19 pandemic, the deceased complainant was unable to appear before the trial Court. Subsequently, during the second wave of Covid-19 pandemic, he passed away. Further, till his death, he appeared before the Court below regularly and complied with the direction of the learned trial Judge. Hence, he seeks to allow this appeal by setting aside the order passed by the trial Court.



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4. The learned counsel for the respondent submitted that there was no bona fides in this appeal and the appellant ought to have impleaded himself as a complainant and he failed to avail the opportunities granted by the trial Court and hence, he seeks for dismissal of this appeal.

5. This Court considered the rival submissions and perused the records and also the complaint.

6. The appellant is the son of the complainant. On 25.04.2014, he filed a private complaint under Section 138 r/w 142 of the Negotiable Instrument Act, to take action against the respondent on the file of Judicial Magistrate No.VI, Thiruchirapalli, with delay by filing a petition for condonation of delay and summons was issued to the respondent/accused and the accused has not appeared. In the mean time, the case was transferred to the Judicial Magistrate No.V (FAC), Thirucirappalli, on account of the territorial jurisdiction and the condone delay petitioner was ordered and main case was taken on file in C.C.No.215 of 2017 and summons was issued to the accused. The accused has not appeared and therefore, warrant was issued. Subsequently, his counsel appeared on



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08.12.2017 and sought adjournment and the same was declined and directed to appear before the Court on 20.12.2017. In the said circumstances, he filed the quash petition before this Court in Crl.O.P.(MD)No.17895 of 2017. Thereafter, he never appeared before the trial Court. Subsequently, the defacto complainant died on 31.05.2021. Thereafter, the case was posted to implead the legal heirs of the deceased defacto complainant. Due to the Covid-19 pandemic, he was unable to contact his counsel. Hence, this said case was dismissed for non-prosecution on 04.11.2022. Thereafter, he filed this appeal with delay. This Court issued notice to the respondent and on her appearance, delay was condoned and the appeal was numbered. The deceased defacto complainant initiated the proceedings on 25.04.2014. Thereafter, there was no progress in serving the summons to the accused. The accused only after dismissal of the her adjournment petition in CMP.No.6817 of 2017 dated 27.12.2017, filed the quash petition and allowed to dismiss for the non-prosecution on 27.12.2017. Thereafter, the case in C.C.No.215 of 2017 was dismissed on the ground that no steps were taken for impleading the legal heirs of the deceased defacto complainant by passing the impugned order.



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7. From the above sequence of the events, it is clear that the deceased defacto complainant appeared before the Court below and regularly complied with the direction of the learned trial Judge. But, the accused without making any single appearance, filed a petition in Crl.MP.No.6817 of 2017 praying to dispense with the appearance and the same was dismissed on 27.12.2017. Thereafter, she filed the quash petition and allowed to dismiss it for non-prosecution. Subsequently, the complainant died during the second wave of Covid-19 pandemic. Hence, the petitioner namely, the legal heir of the deceased defacto complainant filed this appeal to set aside the impugned order passed by the learned trial Judge. This Court considered that the deceased defacto complainant regularly appeared before the trial Court till his death and the accused was playing dilatory tactics from the initial stage onwards and the cheque amount involved in this case is Rs.10,00,000/- and in order to give an opportunity to the petitioner to get the verdict on adjudication and considering that the defacto complainant died during the second wave of Covid-19 pandemic and in the interest of justice, this Court is inclined to allow this appeal on term.



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8. Accordingly, this appeal is allowed with the following term:-

- i) the impugned order passed by the Judicial Magistrate No.V, Tiruchirapalli, in C.C.No.215 of 2017, dated 04.11.2022, is set aside with a condition to pay the cost of Rs.10,000/- (Rupees Ten Thousand only) to the credit of the Environment Committee Operated by the Registrar (Judicial) [Account No.7633863037; MICR Code: 625019020, CIF No.30602376727, IFSC Code: IDIB000H040, High Court Branch, Madurai].

08.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
dss/sbn

To

1. The Judicial Magistrate No.V,
Tiruchirapalli.
2. The Section Officer,
Record Section (Criminal),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN,J.

dss/sbn

Order made in
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