



WEB COPY



Crl.O.P.No.19154 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.06.2024

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

Crl.O.P.No.19154 of 2016

in

Crl.A.Sr.No.34397 of 2012

M/s. Schenker India Pvt. Ltd.,
Formerly known as
M/s. Bax Global India Pvt. Ltd.,
Rep. by P.Vijayakumar
No.8, Mc Nicholos Road, Chetpet,
Chennai – 31.

...Petitioner

Vs.

1. M/s. Aarbee Apparels Impex,
SF No.263/2A, Aarbee Garden,
Lakshmi Nagar,
Veerapandi(PO), Tirupur.
2. Balaji
3. Srinivasaraghavan

...Respondents

Crl.O.P.No.19154 of 2016: Petition filed under Section 378(4) of Cr.P.C. to grant special leave and permit the petitioner to prosecute the above appeal filed against the order of acquittal dated 05.06.2012 made in CC.No.3548 of 2006 on the file of the Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai.



Crl.O.P.No.19154 of 2016

Crl.A.Sr.No.34397 of 2012: Appeal filed under Section 378(4) of Cr.P.C. to set aside the order of acquittal dated 05.06.2012 made in CC.No.3548 of 2006 on the file of the Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai, by allowing this appeal.

For Petitioner : Ms.T.Jayalakshmi
for M/s. Paul and Paul

For Respondents : Mr.C.Subramanian, for R2 & R3

ORDER

This Criminal Original Petition has been filed seeking to grant special leave to the petitioner to prosecute the above appeal filed against the order of acquittal dated 05.06.2012 made in CC.No.3548 of 2006 on the file of the Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai.

2. The case of the petitioner is that, the 1st respondent/1st accused had engaged the services of the petitioner/complainant for handling various export assignments and during the course of business, as there was outstanding due of Rs.7,17,686/- payable by the respondents to the petitioner, the 2nd respondent being the authorised signatory of the 1st respondent issued a cheque bearing No.0267923 dated 10.03.2005 for a sum



Crl.O.P.No.19154 of 2016

of Rs.7,17,686/- for settling the above said due. When the said cheque was presented by the petitioner for collection, the same was returned with an endorsement “Stop payment”. Thereafter, the petitioner sent a statutory notice to the respondents on 09.04.2005 and despite receiving the same, as the respondents have not repaid the outstanding due, the petitioner filed a complaint under Section 200 Cr.P.C., for an offence u/s. 138 r/w. 141 of Negotiable Instruments Act in CC.No.3548 of 2006 on the file of the Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai. While so, the trial court, without going into the merits of the case, vide impugned order dated 05.06.2012 dismissed the said complaint by invoking Section 256 of Cr.P.C. and discharged the accused. Aggrieved by the same, the petitioner has come up with the present petition seeking to grant Special Leave to prefer an appeal against the above said order dated 05.06.2012 made in CC.No.3548 of 2006.

3. Learned counsel for the petitioner submitted that, the trial Court dismissed the complaint filed by the petitioner, vide impugned order by invoking Section 256 of the Cr.P.C without affording an opportunity of



Crl.O.P.No.19154 of 2016

personal hearing to the petitioner and erred in acquitting the respondents which is *per se* unsustainable. Accordingly, he prayed this Court to set aside the order dated 05.06.2012 made in CC.No.3548 of 2006 and remit the matter to the trial Court by fixing an outer limit time to dispose of the complaint filed by the petitioner.

4. Learned counsel appearing for the respondents 2 and 3 submitted that, the complaint is of the year 2006 which came to be dismissed only in the year 2012 for want of appearance of the petitioner, after a lapse of six years. While so, challenging the same, the petitioner has filed the present petition seeking grant of leave to prefer appeal against the said order only in the year 2016 and this act of the petitioner is nothing but to delay the proceedings and to harass the respondents and the same cannot be entertained. Accordingly, he prayed for dismissal of this petition.

5. This Court gave its anxious consideration to the submission advanced by the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.



WEB COPY

6. A perusal of the materials available on record reveal that on the date when the case was posted, the petitioner had not appeared before the court, which prompted the court to dismiss the case for non-prosecution and at the same time acquitting the respondents. The said act of the court below in acquitting the respondents is *per se* impermissible as without hearing the petitioner, the court below ought not have dismissed the petition as an opportunity of hearing is mandatory and non-grant of the same is in violation of principles of natural justice. Therefore, this court is inclined to set aside the order and remand the matter to the court below for fresh consideration.

7. At the same time, considering the fact that the complaint is of the year 2006 and the same was kept pending for a period of six year due to non-appearance on the part of the petitioner, this Court considers it appropriate to remand the matter to the trial court on payment of costs.

8. Accordingly, for the reasons aforesaid, the order passed by learned



Crl.O.P.No.19154 of 2016

Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai in

WEB CO

CC.No.3548 of 2006 dated 05.06.2012 is set aside and the matter is remitted

to the trial Court for fresh adjudication, on condition that the petitioner pays a sum of Rs.5,000/- (Rupees Five Thousand only) to the Tamil Nadu State Legal Services Authority within a period of two weeks from the date of receipt of this order. Upon production of necessary proof of payment of cost as ordered by this Court, the trial court is directed to restore the complaint in C.C.No.3548 of 2006 on file and take up the same for disposal. The petitioner is directed to appear before the court on the date fixed and let in evidences before the trial Court and the respondents are at liberty to cross examine the prosecution witnesses. After production and examination of the witnesses, the trial Court after affording an opportunity of hearing to the parties is directed to dispose of the complaint filed by the petitioner upon perusal of the materials placed before it within a period of three (3) months from the date of receipt of a copy of this order. Further, it is open to the trial Court to dismiss the complaint made by the petitioner by invoking powers u/s. 256 of Cr.P.C. if the petitioner fails to appear before the trial Court on the first date fixed for hearing.



WEB COPY



Crl.O.P.No.19154 of 2016

9. With the above direction this Criminal original petition stands disposed of. Consequently, the Criminal Appeal is closed at the SR stage itself.

10. Registry is directed to mark a copy of this order to the Member Secretary, Tamil Nadu State Legal Services Authority, Chennai.

19.06.2024

skt

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To

The Metropolitan Magistrate, Fast Track Court-II,
Egmore, Chennai.



WEB COPY



Crl.O.P.No.19154 of 2016

M.DHANDAPANI, J.

skt

Crl.O.P.No.19154 of 2016
in
Crl.A.Sr.No.34397 of 2012



WEB COPY



CrI.O.P.No.19154 of 2016

19.06.2024