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Crl.A.No.348 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.348 of 2024

K.G.Kumarasamy

... Appellant/Complainant

Versus

T.N.Murugan

... Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 of Code of Criminal Procedure to set aside the order passed in S.T.C.No.16 of 2019 by the learned District Munsif cum Judicial Magistrate, Gummidipoondi, Thiruvallur District dated 29.12.2023.

For Petitioner : Mr.K.Balaji

JUDGMENT

This Criminal Appeal has been filed to set aside the order dated 29.12.2023 passed in S.T.C.No.16 of 2019 by the learned District Munsif cum Judicial Magistrate, Gummidipoondi, Thiruvallur District.

2.This Court, on 14.03.2024 and 21.03.2024, had passed the following



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orders:

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Proceedings on 14.03.2024:

“The petitioner as a complainant filed a private complaint under Section 138 of the Negotiable Instruments Act, 1881 in S.T.C.No.16 of 2019 before the learned District Munsif cum Judicial Magistrate, Gummidipoondi. The learned Magistrate vide judgment, dated 29.12.2023 dismissed the complainant for non-prosecution. Against which, the present Criminal Original Petition for granting leave.

2.The learned counsel for the petitioner submitted that the cheque amount involved in this case is to the tune of Rs.10,00,000/-. Referring the adjudication, the learned counsel submitted that from 04.03.2023 to 29.12.2023, the petitioner was not present, hence, the complaint dismissed for non-prosecution. He further submitted that the petitioner is not aware about, the case has been adjourned for appearance of the petitioner. The petitioner had instructed his Advocate who was representing the case from the year 2019. The respondent/accused not appeared and was taking time and the petitioner also lost track of the case. The contention of the petitioner is that the case has been dismissed for non-prosecution and not on merits, hence, real justice would be rendered to the petitioner only after ful-fledged trial.

3.In view of the above, the petitioner is directed to pay Rs.5,000/- (Rupees five thousand only) to the Bar Association, Gummidipoondi (Account No.805910110000992, IFSC Code: BKID0008059, Bank of India, Ponneri Branch, Tiruvallur district) on or before 21.03.2024. On payment of the same, the contention of



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the learned counsel for the petitioner can be considered.

4.Post the matter on 21.03.2024.”

Proceedings on 21.03.2024:

“In continuation of the order passed on 14.03.2024, the petitioner produced the receipt of payment of Rs.5,000/- to the Bar Association, Gummidipoondi dated 20.03.2024.

2.The dismissal order is only for non prosecution on technicality and not on merits. In view of the same, notice to the respondent is not required. This Court is inclined to set aside the dismissal order and restored S.T.C.No.16 of 2019 on file.

3.In view of the same, this Court is inclined to grant leave. Accordingly, leave is granted.”

3.This Court finds that the reason given by the petitioner is reasonable. The respondent/accused not appeared before the trial Court and the case was dismissed for non prosecution. In view of the same, this Court finds that notice to the respondent is not required. Accordingly, notice to the respondent is dispensed with.

4.It is seen that the complaint was dismissed on technical ground for non appearance of the petitioner and not on merits. The substantial justice would be rendered to the petitioner only after full-fledged trial and not by



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short circuiting of dismissal of the complaint for non prosecution.

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5.In view of the above, the impugned order dated 29.12.2023 passed in S.T.C.No.16 of 2019, by the learned District Munsif cum Judicial Magistrate, Gummidipoondi, Thiruvallur District is set aside and the complaint in S.T.C.No.16 of 2019 is restored on the file of learned District Munsif cum Judicial Magistrate, Gummidipoondi. Accordingly, the Criminal Appeal is allowed.

6.The Trial Court is directed to take the complaint on file and proceed with the complaint on merits.

22.03.2024

Index : Yes/No
Internet : Yes/No
Speaking order/Non speaking order
Neutral Citation: Yes/No
rsi

To

The District Munsif cum Judicial Magistrate,
Gummidipoondi, Thiruvallur District.



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M.NIRMAL KUMAR, J.

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