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Crl.A.No.387 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.387 of 2024

Imam Jaffer

... Appellant

Versus

S.Sathyanarayanan

... Respondent

PRAYER: Criminal Appeal filed under Section 378 of Code of Criminal Procedure to set aside the judgment of acquittal dated 27.10.2023 made in C.C.No.37 of 2018 on the file of the learned Judicial Magistrate Court, Mettupalayam, Coimbatore District and to convict the accused person.

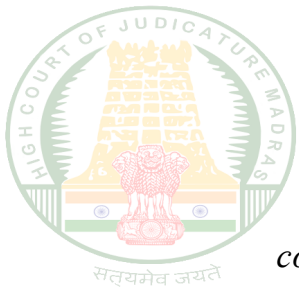
For Petitioner : Mr.I.Periaswamy

JUDGMENT

This Criminal Appeal has been filed to set aside the order dated 27.10.2023 passed in C.C.No.37 of 2018 by the learned Judicial Magistrate, Mettupalayam, Coimbatore District.

2.This Court, by order dated 19.03.2024 in Crl.O.P.No.6395 of 2024 granted leave and had given reasons for the same, which reads as follows:

“The petitioner as complainant had filed a private



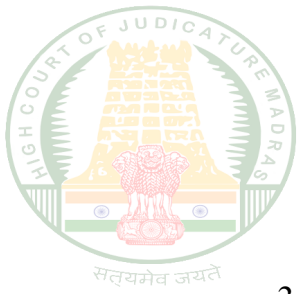
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complaint against the respondent for offence under Section 138 of the Negotiable Instruments Act in C.C.No.37 of 2018. The trial Court, by judgment dated 27.10.2023, dismissed the complaint for non prosecution, against which, the present leave petition and appeal.

2.The contention of the learned counsel for petitioner is that the trial Court referring to a notice in D.No.1905 of 2022 dated 12.10.2022 finding that neither the petitioner nor his counsel appeared before the trial Court, which shows that the petitioner is not interested in prosecuting the complaint, dismissed the complaint.

3.The learned counsel for petitioner submits that the petitioner is a small time Potato Merchant. He supplied potatoes to the respondent, who is at Kollam, Kerala on various dates for the total value of Rs.2,22,780/-. The respondent assured that he will repay the amount within a short period. In discharge of his liability, he issued the cheque, which was presented and got dishonoured. The dismissal of the complaint for non prosecution would amount to short circuiting of complaint and real justice would be rendered after full fledged trial.

4.Finding reason and force in the submission of the learned counsel for petitioner, this Court is inclined to grant leave. Accordingly, leave is granted.”



Crl.A.No.387 of 2024

WEB COPY

3.The learned counsel for petitioner undertakes that the petitioner will diligently follow up the case. Further submitted that the petitioner is taking steps to execute the Non Bailable Warrant against the respondent and to conclude the trial without any further delay.

4.This Court finds that the reason given by the petitioner is reasonable and also Non Bailable Warrant is pending against the respondent from the year 2018. 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 notice to the respondent not required. Accordingly, notice to the respondent is dispensed with.

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

6.In view of the above, the impugned order dated 27.10.2023 passed in C.C.No.37 of 2018 by the learned Judicial Magistrate, Mettupalayam is set



WEB COPY



Crl.A.No.387 of 2024



Crl.A.No.387 of 2024

M.NIRMAL KUMAR, J.

WEB COPY

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aside and the complaint in C.C.No.37 of 2018 is restored on the file of
learned Judicial Magistrate, Mettupalayam. Accordingly, the Criminal Appeal
is allowed.

7.The petitioner is directed to diligently prosecute the case in
C.C.No.37 of 2018.

19.03.2024

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

The Judicial Magistrate,
Mettupalayam,
Coimbatore District.

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