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Crl.O.P.No.13893 of 2023



**IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.04.2024**

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**Crl.O.P.No.13893 of 2023 and
Crl.A.SR.No.9987 of 2023**

B.Ravichandran

... Petitioner

Vs.

K.Kulandaivel

...Respondent

Prayer in Crl.O.P.No.13893 of 2023 : This petition has been filed u/s.378 (4) of Cr.P.C. to grant leave to the petitioner to present this Criminal appeal challenging the impugned order of the learned Judicial Magistrate at Udhagamandalam in S.T.C.No.4287 of 2016 dated 19.09.2022.

For Petitioner

: Mr.Thangavadhanabalakrishnan

For Respondent

: Mr.S.Anand Venkatesh

ORDER

The present petition has been filed to grant leave to the petitioner to present this Criminal appeal challenging the impugned order of the learned Judicial Magistrate at Udhagamandalam in S.T.C.No.4287 of 2016 dated 19.09.2022.



2. The case of the petitioner is that the petitioner lent an amount of Rs.5,00,000/- to the respondent who was his long time friend as hand loan for his urgent business requirement on 15.04.2015 and the respondent promised to repay the amount with 24% interest in a period of six months and also executed a demand promissory note on the same day. However, on repeated demand of the petitioner, the respondent issued a cheque and when the petitioner presented the cheque for en-cashment with his bankers, the same was dishonoured reasoning “Insufficient Fund” on 23.08.2016, pursuant to which the petitioner sent a statutory legal notice dated 02.09.2016 to the respondent. However, the respondent has chosen to ignore the same, due to which, the petitioner made a complaint u/s.138 of the Negotiable Instruments Act, 1881 before the learned Judicial Magistrate Court, Udthagamandalam on 18.10.2016 and the said complaint was numbered as S.T.C.No.4287 of 2016 and dismissed vide order dated 19.09.2022 for non-appearance of the petitioner and acquitted the respondent. Challenging the same, the petitioner has filed the present petition to grant leave to present the criminal appeal challenging the impugned order dated 19.09.2022.

3. The learned counsel for the petitioner submits that the petitioner



was not granted any opportunity to defend his case in S.T.C.No.4287 of 2022, and the said matter was dismissed and the court below acquitted the accused which is not sustainable. However, he fairly submits that the order had come to be passed due to his non-appearance and, therefore, this Court may permit him to canvass his grievance subject to payment of costs of Rs.25,000/- to the respondent.

4. Heard the learned counsel appearing for the respondent and perused the materials placed on record.

5. The court below had dismissed the case on the ground that the complainant had not appeared inspite of grant of sufficient time. The order of the court below reads as under :-

"Complainant absent. No representation. Accused absent. Petition filed and allowed. Counsel for accused present. Sufficient time granted, even after granting enough opportunity, Complainant failed to appear and produce evidence, shows no intention to conduct the case. Hence, in view of non-appearance, the case is dismissed and accused is acquitted."



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6. From the above, it is evident that the dismissal order had come to be passed not without affording opportunity, but due to the continued absence of the petitioner. However, the order has not been passed on merits.

7. However, without the petitioner appearing before the court below, challenging the order before this Court stating that it is illegal and perverse is unjustified. However, in view of the above stand taken by the petitioner that he is ready and willing to pay a sum of Rs.25,000/- as costs to the respondent, and as the court below had not decided the case on merits, in the interest of justice, to grant one more opportunity to the petitioner, this court without adjudicating the appeal on merits by granting leave, deems it sufficient that the matter could be remanded for fresh consideration on merits by the court below subject to payment of costs to the respondent.

8. Accordingly, this petition is disposed of the order in S.T.C.No.4287 of 2016 is set aside and the matter is remanded to the Court below subject to the condition that the petitioner pays a cost of



Crl.O.P.No.13893 of 2023

Rs.25,000/- to the accused within a period of four (4) weeks from the date of receipt of a copy of this order. Upon proof being filed with regard to payment, the learned Judicial Magistrate, Udhagamandalam is directed to take up STC No.4287 of 2016 for fresh adjudication on merits and pass orders in accordance with law.

9. Accordingly, Crl.O.P.No.13893 of 2023 is disposed of with the aforesaid directions and consequently, Crl.A.Sr.No.9987 of 2023 stands closed.

25.04.2024

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Index : Yes/No

Internet : Yes/No

Office to Note: Issue order copy on or before 26.04.2024.

To

The Judicial Magistrate at Udhagamandalam.



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Crl.O.P.No.13893 of 2023

M.DHANDAPANI. J.

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