



CRL. A. No. 919/2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.07.2024

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO. 919 OF 2024

M/s. Micro Enterprises
Rep. By its Managing Partner
Mr. B.Jayakumar
Kamaraj Nagar 8th Street
Chennai 600 039.

.. Appellant

- Vs -

T.Thangakumar

.. Respondent

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure against the judgment in C.C. No.7118 of 2016 dated 19.10.2022 passed by the Metropolitan Magistrate, Fast Track Court – I, Egmore at Allikulam, Chennai, by allowing this appeal and remand back C.C. No.7118 of 2016 to Magistrate Court.

For Appellant : Mr. C.Shankar

JUDGMENT



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Assailing the order in and by which the complaint initiated by the appellant u/s 138 of the Negotiable Instruments Act (for short 'the Act') had come to be dismissed, the present appeal is directed against the said judgment.

2. Initially, Crl. M.P. No.7576/2023 seeking to condone the delay in preferring the above appeal, which was accompanied with Crl. O.P. No.15754/2024 praying to grant leave to file the appeal against the order of acquittal. When the delay petition was taken up on 2.7.2024, while this Court condoned the delay and had directed to list the petition for grant leave, however, inadvertently, it had been recorded that a direction had been issued to the Registry to number the appeal, which has resulted in the Registry numbering the appeal.

3. Thereafter, the petition for grant leave was listed on 5.7.2024, on which date, the appeal already having been numbered, this court felt that no useful purpose would be served in deciding the leave petition on merits and,



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therefore, allowed the grant leave petition and directed listing of the appeal for hearing, whereinafter, the present appeal has been listed for hearing.

4. It is the case of the appellant that the respondent had business dealing with the appellant and was enjoying credit facility with regard to purchase made and the credit of the respondent stood at Rs.23,02,441.50. Towards the outstanding amount, the respondent had issued an indemnity letter on 29.10.2015 in favour of the appellant accepting the total outstanding amount and to discharge the said liability, a cheque dated 27.02.2016 was issued by the respondent on 29.10.2015 drawn on HDFC Bank, KK Nagar Branch. However, after issuing the cheque, the respondent levelled unsubstantiated allegations against the appellant vide letter dated 26.2.2016, which was replied by the petitioner. As per the agreement, the appellant presented the cheque for collection on 27.2.2016, which when presented for encashment was returned with an endorsement "Payment stopped by drawer" along with a memo on 1.3.2016, which was received by the appellant on 3.3.2016.



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5. The appellant caused a legal notice to the respondent on 29.3.2016, which was served on the respondent on 30.3.2016 and reply was issued to the said notice by the respondent on 6.4.2016 wherein the respondent has admitted in unnumbered paragraph No.8 that only a meagre amount is due and payable to the appellant, but the amount has neither been quantified nor the respondent had come forward to settle the legal liability, which prompted the appellant to file the complaint.

6. Upon cognizance being taken, summons were issued to the accused, however, as the accused did not appear, bailable warrant was issued to the accused as early as on 10.10.2017. However, inspite of the said order, as the complainant did not come forward to pay the process batta for execution of the bailable warrant. Further, there was no representation for the appellant and the appellant kept absent for long period and even on 19.10.2022, the matter was called thrice, but there was no representation. Therefore, in view of the long passage of time and as the appellant did not show any interest in prosecuting the complaint, the complaint was dismissed for non-payment of



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process batta. Aggrieved by the said order of dismissal the present appeal has been preferred.

7. Learned counsel appearing for the appellant submitted that initially bailable warrant was ordered on 25.1.2018 and batta was paid by the appellant on 10.05.2018, but the warrant was returned unexecuted along with covering letter that the accused had left the address long back, which has been recorded.

8. It is the further submission of the learned counsel that the appellant is taking steps for filing batta thereafter, but unfortunately due to pandemic situation, the appellant could not pay the batta. The learned Magistrate did not issue notice to the appellant before passing the impugned order, thereby there is violation of principles of natural justice. It is the further submission of the learned counsel that the court below ought to have directed the appellant to take further steps u/s 82 Cr.P.C. The order of dismissal passed by the court below is wholly arbitrary, perverse and illegal and against the provisions of the



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Code and, therefore, liable to be set aside and the matter remanded back to the court below for fresh consideration.

9. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the appellant and perused the materials available on record.

10. The complaint had been instituted in the year 2016 on which bailable warrant was issued against the accused on 10.10.2017. According to the appellant, he paid batta on 25.01.2018 and, thereafter, on 10.05.2018, the warrant was returned unexecuted along for the reason that the accused had left the address long back, which has been recorded. It is the further stand of the appellant that the court below failed to see that the appellant was taken further steps for filing batta but the pandemic situation precluded the appellant from filing the batta.

11. Though such a contention has been advanced on behalf of the appellant, however, it is to be pointed out that even as early as on 10.05.2018,



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the warrant was returned unexecuted as the accused had left the address long back, which has also been recorded. However, the appellant had not taken any fruitful steps to file further batta for executing the warrant. Though the appellant claims that the court below ought to have directed the appellant to take further steps u/s 82 Cr.P.C., it is to be pointed out that the manner in which the steps has to be taken is to be decided by the appellant and only had the appellant sought for taking steps for proclamation u/s 82 Cr.P.C., the court below could have ordered such petition. However, curiously, the appellant has not taken any steps either to file batta or to file petition u/s 82 Cr.P.C., which resulted in the complaint being dismissed during October, 2022.

12. Though it is the stand of the appellant that the pandemic situation prevented the appellant to take steps, it is to be pointed out that the the onset of the pandemic was during March, 2020, and there was a gap of two years between the return of the warrant and taking further steps. The appellant cannot hide behind the pandemic and seek for indulgence at the hands of the court. It is the duty of the appellant to judiciously canvass his plea without wasting the time of the court. However, the appellant has not



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been diligent enough to prosecute the complaint and in such a backdrop, having allowed the complaint to become stale, the appellant cannot now come before this Court and seek remand of the matter by setting aside the order and giving any such relief would be against the interest of justice. Almost 10 years have passed between the date when the respondent was alleged to have been due in payment to the appellant and today and such being the case, it would be perverse if the matter is given life once over.

13. Further, it is even the case of the appellant that the respondent had not accepted that he is due and payable the aforesaid amount to the appellant. When the appellant has not established the legally enforceable debt through any tangible material, setting aside the order passed by the court below would be against the interest of the respondent, moreso at this distant point of time. Therefore, this Court is not inclined to interfere with the order passed by the court below.

14. For the reasons aforesaid, the impugned order passed by the court below does not deserve interference and the same stands affirmed.



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Index : Yes / No

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To

The Metropolitan Magistrate
Fast Track Court – I
Egmore @ Allikulam
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M.DHANDAPANI, J.

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