



WEB COPY



Crl.R.C.No.1174 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1174 of 2024

T.V.Shanmugam

... Petitioner

Vs.

C.Rajendran

... Respondent

PRAYER : Criminal Revision filed under Section 397 r/w Section 401 of the code of Criminal Procedure, 1973 to call for the records relating to the order dated 19.07.2023 made in Crl.M.P.No.1132 of 2023 pending on the file of the Principal District and Sessions Court, Salem and set aside the same.

For Petitioner : Mr.C.Deepakkumar

For Respondent : Mr.M.Senthil Kumar

O R D E R

This criminal revision case is filed against the order dated 19.07.2023 passed in Crl.M.P.No.1132 of 2023 by the learned Principal District and Sessions Judge, Salem and allow the criminal revision.



CrI.R.C.No.1174 of 2024

WEB COPY

2. It is the case of the petitioner that the petitioner and the respondent are family friends and for the purpose of personal expenses, the petitioner obtained Rs.2,00,000/- from the respondent and the petitioner issued a post-dated cheque on 30.12.2019 bearing cheque No.000025 for a sum of Rs.2,00,000/- to discharge the said liability. However, the said cheque, upon deposit on 11.02.2020 was returned by the bankers on 13.02.2020 on the ground of insufficient funds. Therefore, the respondent caused a legal notice to the petitioner on 02.03.2020, which was received by the petitioner, but no reply was sent by the petitioner. Therefore, the respondent was constrained to file a complaint under Section 138 r/w 142 of Negotiable Instruments Act and the same was taken on file in S.T.C.No.671 of 2020 before the learned Judicial Magistrate No.I, Mettur. After elaborate discussions, the learned Judicial Magistrate No.I, Mettur convicted the petitioner / accused and sentenced him to undergo one year simple imprisonment and to pay a sum of Rs.2,00,000/- as compensation to the respondent, in default to undergo simple imprisonment for a further period



Crl.R.C.No.1174 of 2024

of three months. The petitioner has filed condone delay petition in Crl.M.P.No.1132 of 2023 before the learned Principal District and Sessions Court, Salem with a delay of seven days in filing the criminal appeal as against the order made in S.T.C.No.671 of 2020, however the same was dismissed for default on 19.07.2023. Challenging the same, the present petition has been filed.

3. The learned counsel appearing for the petitioner submitted that though the trial Court ordered for notice in the condone delay petition, batta has not been paid and an *ex-parte* order has been passed on 19.07.2023. He further submitted that without providing sufficient opportunity, an *ex-parte* order was passed by the trial Court and it is clear violation of principles of natural justice. Accordingly, he prays for appropriate orders.

4. The learned counsel appearing for the respondent would submit that deliberately, the petitioner has not appeared before the trial Court, even though the trial Court has given sufficient opportunity to the petitioner. He



Crl.R.C.No.1174 of 2024

further submitted that no proper reasons have been stated by the petitioner for the delay in filing the appeal and also for non-payment of batta and hence, rightly appreciating the above, the trial Court dismissed the petition, which cannot be interfered with.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. It appears that the respondent has initially filed a complaint under Section 138 r/w 142 of Negotiable Instruments Act as against the petitioner before the learned Judicial Magistrate No.I, Mettur and the same was taken on file in S.T.C.No.671 of 2020. After full-fledged trial, the trial Court convicted the petitioner and sentenced to undergo simple imprisonment for a period of one year and to pay a sum of Rs.2,00,000/- as compensation to the respondent, in default to undergo simple imprisonment for a further period of three months. Aggrieved over the same, the petitioner has filed condone delay petition in Crl.M.P.No.1132 of 2023 before the



Crl.R.C.No.1174 of 2024

learned Principal District and Sessions Court, Salem with a delay of seven days. Overlooking the fact that the appeal was filed and meanwhile, delay has been occurred, for which, while re-presenting the appeal, the petitioner has filed a condone delay petition in Crl.M.P.No.1132 of 2023 on the file of the learned Principal District and Sessions Court, Salem, the appellate Court dismissed the petition for default which is untenable and the Court has to hear the matter leniently and such leniency has not been shown by the appellate Court. In order to give one opportunity to the petitioner, this Court is inclined to set aside the order dated 19.07.2023 passed in Crl.M.P.No.1132 of 2023 in S.T.C.No.671 of 2020 by the learned Principal Sessions Judge, Salem and accordingly, it is set aside on the following terms:

(i) the petitioner is directed to pay a sum of Rs.2,000/- (Rupees Two Thousand only) to the respondent and a proof to that effect shall be produced before the learned Principal Sessions Judge, Salem.

(ii) On production of proof by the petitioner, the learned Principal Sessions Judge, Salem, is directed to entertain the criminal appeal filed by



Crl.R.C.No.1174 of 2024

WEB COPY

petitioner and decide the case on merits and in accordance with law, after providing sufficient opportunity to the petitioner and the respondent, and dispose of the same as expeditiously as possible.

7. Accordingly, this Criminal Revision Case is allowed.

18.07.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

Note: Issue order copy by 19.07.2024.



WEB COPY



Crl.R.C.No.1174 of 2024

To

1. The Principal District and Sessions Court,
Salem.
2. The Judicial Magistrate No.I,
Mettur.
3. The Public Prosecutor,
Madras High Court,
Madras.



WEB COPY



Crl.R.C.No.1174 of 2024

M.DHANDAPANI, J.

vji

Crl.R.C.No.1174 of 2024

18.07.2024