



CrI.OP.No.17015 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.07.2024

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

CrI.OP.No.17015 of 2024  
in  
CrI.A.SR.No.27539 of 2024

Mohit Kumar Jain

...Petitioner

Vs.

Anand

...Respondent

**CrI.OP.No.17015 of 2024:** Petition filed seeking to grant special leave to file the appeal as against the order of acquittal passed by the learned Fast Track Court-I Metropolitan Magistrate, Allikulam, Chennai in CC.No.894 of 2014 dated 28.07.2022.

**CrI.A.SR.No.27539 of 2024:** Appeal filed under Section 378(4) of Cr.P.C. to set aside the order of dismissal dated 28.07.2022 made in CC.No.894 of 2014 on the file of the learned Fast Track Court-I Metropolitan Magistrate, Allikulam, Chennai and allow the criminal appeal and consequently restore the CC.No.894 of 2014 to the file of the learned Fast Track Court-I Metropolitan Magistrate, Allikulam, Chennai and to fix a time frame to dispose of the case as may be fixed by this Hon'ble Court.



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For Petitioner : Mr.R.Shruthan

For Respondent : M/s.Sweatha Kasi

### **ORDER**

This Criminal Original Petition has been filed seeking to grant special leave to the petitioner to prosecute the above appeal filed against the order of acquittal dated 28.07.2022 made in CC.No.894 of 2014 on the file of the Fast Track Court-I Metropolitan Magistrate, Allikulam, Chennai.

2. The case of the petitioner is that, the respondent/accused borrowed a sum of Rs.3,30,000/- from the petitioner/complainant and he also executed a promissory note on 25.07.2013 to that effect. For the discharge of the above said liability, the respondent issued a cheque bearing No.137880 dated 31.07.2013 for a sum of Rs.3,30,000/-. When the said cheque was presented for collection by the petitioner, the same was returned with an endorsement "Funds insufficient". Thereafter, the petitioner sent a legal notice to the respondent on 09.08.2013 and despite receiving the same, as the respondent has not discharged the above said liability, the petitioner



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filed a complaint under Section 200 Cr.P.C., for an offence u/s. 138 of Negotiable Instruments Act on the file of the Fast Track Court-I Metropolitan Magistrate, Allikulam, Chennai in CC.No.894 of 2014. While so, the trial court, without going into the merits of the case, vide impugned order dated 28.07.2022 dismissed the said complaint by invoking the power under Section 204(4) r/w. 256 of Cr.P.C. Aggrieved by the same, the petitioner has come up with the present petition seeking to grant Special Leave to prefer an appeal against the above said order dated 28.07.2022 made in CC.No.894 of 2014.

3. Learned counsel for the petitioner submitted that, the trial Court dismissed the complaint filed by the petitioner, vide impugned order by invoking Section 204(4) r/w 256 of the Cr.P.C without affording an opportunity of personal hearing to the petitioner and erred in acquitting the respondent which is *per se* unsustainable. Accordingly, he prayed this Court to set aside the order dated 28.07.2022 made in CC.No.894 of 2014 and remit the matter to the trial Court by fixing an outer limit time to dispose of the complaint filed by the petitioner.



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4. Learned counsel appearing for the respondent submitted that, the complaint is of the year 2014 which came to be dismissed by the trial court only in the year 2022 for want of appearance of the petitioner, after a lapse of eight years. While so, challenging the same, the petitioner has filed the present petition seeking grant of special leave to prefer appeal against the said order only in the year 2024 and this act of the petitioner is nothing but to delay the proceedings and to harass the respondent and the same cannot be entertained. Accordingly, he prayed for dismissal of this petition.

5. This Court gave its anxious consideration to the submission advanced by the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

6. A perusal of the materials available on record reveal that on the date when the case was posted, the petitioner had not appeared before the court, which prompted the court to dismiss the case for non-prosecution and at the same time acquitting the respondent. The said act of the court below



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in acquitting the respondent is *per se* impermissible as without hearing the petitioner, the court below ought not have dismissed the petition as an opportunity of hearing is mandatory and non-grant of the same is in violation of principles of natural justice. Therefore, this court is inclined to set aside the order and remand the matter to the court below for fresh consideration.

7. At the same time, considering the fact that the complaint is of the year 2014 and the same was kept pending for a period of eight years due to non-appearance on the part of the petitioner and non payment of process fee by the petitioner, this Court considers it appropriate to remand the matter to the trial court on payment of costs.

8. Accordingly, for the reasons aforesaid, the order passed by learned Fast Track Court-I Metropolitan Magistrate, Allikulam, Chennai, in CC.No.894 of 2014 dated 28.07.2022 is set aside and the matter is remitted to the trial Court for fresh adjudication, on condition that the petitioner pays



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a sum of Rs.5,000/- (Rupees Five Thousand only) to the respondent within a period of two weeks from the date of receipt of this order. Upon production of necessary proof of payment of cost as ordered by this Court, the trial court is directed to restore the complaint in C.C.No.894 of 2014 on file and take up the same for disposal. The petitioner is directed to appear before the court on the date fixed and let in evidences before the trial Court and the respondent is at liberty to cross examine the prosecution witnesses. After production and examination of the witnesses, the trial Court after affording an opportunity of hearing to the parties is directed to dispose of the complaint filed by the petitioner upon perusal of the materials placed before it within a period of three (3) months from the date of receipt of a copy of this order. Further, it is open to the trial Court to dismiss the complaint made by the petitioner by invoking power u/s. 256 of Cr.P.C. if the petitioner fails to appear before the trial Court on the first date fixed for hearing.



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**WEB COPY** 9. With the above direction this Criminal original petition stands disposed of. Consequently, the Criminal Appeal is closed at the SR stage itself.

**23.07.2024**

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Index : Yes/No  
Speaking order : Yes/No  
NCC : Yes/No

**Note to office:** Issue order copy on 25.07.2024.

To

The Fast Track Court-I Metropolitan Magistrate,  
Allikulam, Chennai.

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**M.DHANDAPANI, J.**

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