



Crl.RC.No.1033 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

Crl.RC.No.1033 of 2024

Dr.Indrani Hemanthkumar

...Petitioner

Vs.

S.Shivakumar

...Respondent

Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C to call for the records and revise the order passed in C.C.No.4761 of 2021 dated 16.05.2024 on the file of Metropolitan Magistrate Fast Track Court – V, Saidapet, Chennai – 600 015.

For Petitioner : Mr.K.Kamaraju

For Respondent : Mr.G.Mannarswamy

ORDER

This Criminal Revision case has been filed seeking revise the order passed in C.C.No.4761 of 2021 dated 16.05.2024 on the file of Metropolitan Magistrate Fast Track Court – V, Saidapet, Chennai – 600 015.



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2. The case of the petitioner is that, the petitioner is the owner of two flats situated in T.Nagar, Chennai and the respondent is the tenant. From the year 2004 onwards, the petitioner leased both her flats to the respondent. Taking advantage of the petitioner staying at Mumbai, the respondent leased out one of the flat to a third party and failed to pay the rent to the petitioner. Thereafter, the respondent vacated Flat No.2 with damages, and Flat No.1 was not vacated by him. In order to repay the rent including the damages made by the respondent to the said flats, he issued two cheques and when the said cheques were presented for collection, the same has been dishonoured with an endorsement "Funds insufficient". Thereafter, the petitioner sent a statutory notice to the respondents on 30.06.2021 calling upon the respondent to make a payment of Rs.10,30,000/- and despite receiving the same, as the respondent has not repaid the outstanding due, the petitioner filed a complaint under Section 200 Cr.P.C., for an offence u/s. 138 and 142 of Negotiable Instruments Act in CC.No.4761 of 2021 on the file of the Metropolitan Magistrate, Fast Track Court-V, Saidapet, Chennai-15. While so, the trial court, without going into the merits of the case, vide impugned order dated 16.05.2024 dismissed the said complaint on the



ground of non-appearance of the complainant. Aggrieved by the same, the petitioner has come up with the present petition.

3. Learned counsel for the petitioner submitted that, for mere non-appearance on the part of the petitioner before the trial court on a particular date, the trial court had dismissed the complaint filed by the petitioner, which is not sustainable and the impugned order passed by the trial court is wholly erroneous, as the same was passed, without issuing notice to the petitioner and without affording opportunity to the petitioner to canvass his case, which is a clear violation of principles of natural justice. Further, he further submitted that, the petitioner is ready to examine all the witnesses within the time stipulated by this Court. Accordingly, he prayed for appropriate orders.

4. Learned counsel appearing for the respondent submitted that, this Court may fix outer limit for the disposal of the main case and the trial court may be directed to afford opportunity and dispose of the case within the stipulated time and further submitted that if the petitioner is not cooperating



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with trial, necessary direction may be issued to the trial court to dismiss the complaint by invoking the provisions of Section 256 of Cr.P.C.

5. Heard learned counsel on either side and perused the material documents placed on record.

6. A perusal of the impugned order reveals that, no opportunity was given to the petitioner and the trial court had directly discharged the accused person without hearing the petitioner, which is against the principles of natural justice, as necessarily opportunity has to be given to the petitioner to put forth his case.

7. In such view of the matter, the impugned order dated 16.05.2024 made in CC.No.4761 of 2021 is set aside and the matter is remanded to the trial court. The petitioner is directed to appear before the court on the date fixed and let in evidences on behalf of the complainant 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



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affording an opportunity of hearing to the parties is directed to dispose of the complaint filed by the petitioner upon 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 powers u/s.256 of Cr.P.C. if the petitioner fails to appear before the trial Court on the first date fixed for hearing.

8. With the above observations and directions, this Criminal revision case stands allowed.

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

To

The Metropolitan Magistrate Fast Track Court – V,
Saidapet,
Chennai – 600 015

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M.DHANDAPANI, J.

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