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CrI.OP.No.17624 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.07.2024

CORAM:

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

CrI.OP.No.17624 of 2024
in
CrI.A.SR.No.32733 of 2024

Kayalvizhi

...Petitioner

Vs.

Mugesh

...Respondent

CrI.OP.No.17624 of 2024: Petition filed under Section 378(4) of Cr.P.C. seeking to grant special leave to file appeal against the order of dismissal of complaint for non prosecution dated 01.04.2024 passed in CC.No.16 of 2021 on the file of the learned Judicial Magistrate, Harur.

CrI.A.SR.No.32733 of 2024: Appeal filed under Section 378 of Cr.P.C. to set aside the order dated 01.04.2024 passed in CC.No.16 of 2021 on the file of the learned Judicial Magistrate, Harur.

For Petitioner : Mr.A.Tamilarasan

For Respondent : Mr.Durai Gunasekaran



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ORDER

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2. The case of the petitioner is that, the marriage between the petitioner/wife and the respondent/husband was solemnised on 05.06.2003. While so, due to some matrimonial dispute, the respondent/husband filed a divorce petition. Pending the same, the respondent/husband married the 2nd accused in the complaint, when the first marriage between the petitioner and the respondent was in existence. When the same was questioned by the petitioner, the respondent harassed and abused the petitioner. Thereby, the petitioner filed a complaint against the respondent and the 2nd accused before the law enforcing agency, however, the same evoked no response. Therefore, left with no other alternative, the petitioner filed complaint under Section 200 of Cr.P.C. in CC.No.16 of 2021 for the offence under Sections 494 to 496 and 498A of IPC. While so, the trial court, without going into



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the merits of the case, vide impugned order dated 01.04.2024 dismissed the said complaint for non prosecution. 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 01.04.2024 made in CC.No.16 of 2021.

3. Learned counsel for the petitioner submitted that, the trial Court dismissed the complaint filed by the petitioner for non-prosecution, vide impugned order without affording an opportunity of personal hearing to the petitioner and erred in acquitting the respondent which is *per se* unsustainable, as the non-appearance on the part of the petitioner is neither wilful nor wanton and the petitioner was unable to appear before the trial court only due to certain health ailments. Accordingly, he prayed this Court to set aside the order dated 01.04.2024 made in CC.No.16 of 2021 and remit the matter to the trial Court by fixing an outer limit time to dispose of the complaint filed by the petitioner.



4. Learned counsel appearing for the respondent submitted that, the complaint is of the year 2021 which came to be dismissed by the trial court only in the year 2024 for want of appearance of the petitioner, after a lapse of three years by considering the fact that the said act of the petitioner is nothing but to delay the proceedings and to harass the respondent and the said order of the trial court does not warrant any interference of this Court. 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 due to alleged ill health, 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 in acquitting the respondent is *per se* impermissible as without hearing the petitioner, the court below ought not



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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. Accordingly, for the reasons aforesaid, the order passed by learned Judicial Magistrate, Harur in CC.No.16 of 2021 dated 01.04.2024 is set aside and the matter is remitted to the trial Court for fresh adjudication. The trial court is directed to restore the complaint in CC.No.16 of 2021 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



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petitioner fails to appear before the trial Court on the first date fixed for hearing.

8. 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

To

The Judicial Magistrate,
Harur.

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M.DHANDAPANI, J.

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