



WEB COPY



Crl.O.P.No.18383 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.No.18383 of 2024
in
Crl.A.SR.No.51053 of 2023

S.A.Palanisamy

... Petitioner

Vs.

B.Ashiba

... Respondent

Prayer in Crl.O.P.No.18383 of 2024 : Criminal Original Petition filed u/s.378(4) of the Code of Criminal Procedure, seeking to grant leave to file appeal against the order of acquittal dated 09.06.2023 made in S.T.C.No.104 of 2021 passed by the District Munsif cum Judicial Magistrate, Uthukuli.

Prayer in Crl.A.SR.No.51053 of 2023 : Criminal Appeal filed under Section 378 of the Code of Criminal Procedure Code, to set aside the order passed by the learned District Munsif cum Judicial Magistrate, Uthukuli in S.T.C.No.104 of 2021 dated 09.06.2023 by allowing this appeal.



Crl.O.P.No.18383 of 2024

For Petitioner : Mr.C.Munusamy

For Respondent : Party-in-Person

ORDER

This Criminal Original Petition has been filed seeking to grant leave to the petitioner to file an appeal against the impugned order passed by the learned District Munsif cum Judicial Magistrate, Uthukuli in S.T.C.No.104 of 2021 dated 09.06.2023.

2. It is the case of the petitioner that, he filed a complaint as against the respondent for an offence u/s 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act') before the trial court in S.T.C.No.104 of 2021. However, without any adjudication or trial, the trial court dismissed the said complaint vide impugned order dated 09.06.2023 on the ground that process was not paid and for non-appearance of the petitioner/complainant. Aggrieved over the same, the petitioner preferred the present petition seeking to grant leave to prefer an appeal against the said order dated 09.06.2023 in S.T.C.No.104 of 2021.

3. Learned counsel appearing for the petitioner submitted that,



CrI.O.P.No.18383 of 2024

WEB COPY

earlier the respondent was residing at Ambedhkar Nagar, 7th Street, Malumichampatty, Chettipalayam Post, Coimbatore – 641 201 and it appears that, now, the respondent was shifted to Akshaya Pallivasal Back Side, Mascow Nagar, College Road, Tirupur and as per the order of this court, the law enforcing agency ensured the appearance of the respondent before this court. He further submitted that, without any trial, the trial court passed the impugned order u/s 256 of Cr.P.C, which is a clear violation of principles of natural justice and the trial court ought to have given one more opportunity to the petitioner to putforth his case, however, the trial court denied to give opportunity to the petitioner, which is wholly unsustainable. Accordingly, he prays for appropriate orders.

4. The respondent (Party-in-Person) fairly submitted that, this court may set aside the impugned order and remand the matter to the trial for fresh adjudication. She also submitted that, she has no sufficient funds to engage a counsel to conduct case on her behalf, hence, she prayed that this court may directed the District Legal Services Authority may to appoint a legal-aid counsel to conduct the case on her behalf before the



5. In view of the above submissions, this court is inclined to dispose of this criminal original petition in the following terms :-

(i) the impugned order dated 09.06.2023 passed by the learned District Munsif cum Judicial Magistrate, Uthukuli is set aside and the matter is remanded to the trial court for fresh consideration ;

(ii) after restoration of S.T.C.No.104 of 2021 on the file of the trial court, the petitioner is directed to take process to the current address of the respondent;

(iii) upon completion of process, if respondent want, the District Legal Services Authority is directed to appoint legal-aid counsel for the respondent (Party-in-Person) for conducting case on her behalf before the trial court;

(iv) after hearing the parties, the trial court is directed to pass appropriate orders in S.T.C.No.104 of 2021, on merits and in accordance with law, as expeditiously as possible.

6. With the above directions, this Criminal Original Petition is



Crl.O.P.No.18383 of 2024

WEB COPY

disposed of. Consequently, the Criminal Appeal is rejected at the SR stage itself.

30.07.2024

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
sp

To

The District Munsif cum Judicial Magistrate, Uthukuli.



WEB COPY



Crl.O.P.No.18383 of 2024

M.DHANDAPANI, J.

sp

Crl.O.P.No.18383 of 2024
in
Crl.A.SR.No.51053 of 2023

30.07.2024