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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

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

Crl.RC.No.980 of 2024

N.Nagarajan

... Petitioner

-Vs-

N.Sivakumar

... Respondent

Prayer: Criminal Revision ha been filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the entire records relating to the order made in STC.No.905 of 2022 dated 19.04.2023 on the file of the learned Judicial Magistrate-I, Namakkal, Namakkal District and set aside the same.

For petitioner : Mr.C.Prakasam
For Respondents : No appearance

ORDER

The petitioner has come forward with this revision as against the dismissal of his complaint due to his absence on only one day.

2. The petitioner has filed a complaint under Section 138 of Negotiable Instruments Act on the ground that the cheques offer by the accused



to the tune of Rs.6,00,000/- which has been dishonored by the Banker later.

Notice sent by the complainant to the accused was received by the Niece of the accused. Despite receiving notice, the accused has not sent any reply or returned any money. Thereby, the complaint lodged before the learned Judicial Magistrate-I, Namakkal.

3. As the petitioner was absent on 19.04.2023, the learned Magistrate has dismissed the complaint.

4. On a perusal of the impugned order, it is seen that the the learned Judicial Magistrate-I, Namakkal has acted in a haste manner while dismissing the complaint.

- On 13.06.2022 , the learned Magistrate has observed that a prima facie case has been made out against the accused and cognizance has taken against the accused for the offence under Section 138 of Negotiable Instruments Act. The case was adjourned on 03.09.2022 for issuance of summons on payment of process fee.
- On 03.09.2022, the learned Magistrate has recorded that summons was served on the accused in his office address. However, the accused called



absent. Hence, bailable warrant was issued on payment of process fee.

WEB COPY The matter was adjourned on 22.11.2022.

- On 22.11.2022, the learned Magistrate has recorded that complainant was present and since process fee was not paid by the complainant, bailable warrant issued against the accused is pending and adjourned the matter on 06.03.2023.
- On 06.02.2023, the learned Judicial Magistrate has recorded that the complainant was present, bailable warrant pending against the accused by 19.04.2023.

5. On 19.04.2023, the learned Judge has recorded that the complainant was absent and process fee not paid in spite of granting sufficient time. Hence, the complaint is dismissed.

6. This Court is atleast understood how the learned Judicial Magistrate has dismissed the complaint in the absence of the complainant on only one occasion. It is true that the complainant has failed to pay the process fee to effect the bailable warrant against the accused. However, the learned Judicial Magistrate ought to have given one more opportunity to the



petitioner/complainant to pay the process fee.

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7. In such view of the matter, this Court is inclined to set aside the order of the learned Magistrate, Namakkal on the ground that the learned Judge himself has recorded that a prima facie case has made out against the accused. The Cheque amount is Rs.6,00,000/-. For non appearance of one occasion, the learned Judicial Magistrate had not to have dismiss the complaint.

8. In the result, the revision is allowed and the petitioner is directed to pay the process fee within a period of two weeks from the date of receipt of a copy of this order, failing which, the order of dismissal passed by the learned Judicial Magistrate would stand revived.

01.07.2024

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Index : Yes/No

Internet: Yes/No

Speaking Order : Yes/No



To

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1. The Judicial Magistrate-I, Namakkal,
Namakkal District.
2. The Public Prosecutor,
High Court, Madras.



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M.DHANDAPANI,J.

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