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CRL.O.P.Nos.1023 of 2024 etc batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.Nos.10232, 10643, 10709, 10237, 10446, 10617, 10243,
10973 and 10519 of 2024

in

Crl.A.Sr.Nos.41641, 41646, 41669, 41677, 41683, 41661, 41635,
41630 and 41655 of 2023

Crl.O.P.No.10232 of 2024:

The Commissioner,
Municipality, Thirupattur,
Corporation Office,
Government Garden,
Thiruppathur Town,
Vellore District.

.. Petitioner

Vs.

S.Jayaganesh

... Respondent

Prayer in Crl.O.P.No.10232 of 2024: This Criminal Original Petition has been filed under Section 378(4) of Cr.P.C. to grant special leave to file the appeal against the judgment passed by the learned Judicial Magistrate, No.1, Thirupattur, Vellore District in S.T.C.No.90 of 2016 dated 03.03.2023.



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Prayer in Crl.A.SR.No.41661 of 2023: This Criminal Appeal has been filed under Section 378 of Cr.P.C. against the judgment passed by the learned Judicial Magistrate, No.1, Thirupattur, Vellore District in S.T.C.No.90 of 2016 dated 03.03.2023.

In all petitions:

For Petitioner : Mr.E.Kannadasan

For Respondents : Mr.C.D.Johnson

COMMON ORDER

Since the issue involved in the present petitions are one and the same they are disposed of by way of this common order.

2. It is the case of the petitioner that the petitioner has issued a tender notification for taking lease of the shops owned by the petitioner for a period of one year from 2014 – 2015. Based on the said notification, the respondents participated in the auction and they got selected as successful bidders and the lease was granted in favour of them. Since the respondents in respective criminal original petitions failed to pay the lease amount, the petitioner caused notice on various dates to the respondents. Though the respective respondents were received by the respondents, they have neither replied nor settled the lease amount to the petitioner.



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Hence, the petitioner was constrained to file respective complaints as against the respondents before the learned Judicial Magistrate No.1, Thirupattur, Vellore District and the same was taken on file and though summons were served, but the petitioner failed to appear for trial. Therefore, the court below dismissed the petitions and acquitted the respondents. Aggrieved by the same, the petitioner has filed the present petition seeking grant of special leave to prefer respective appeals against the order dated 03.03.2023 made in S.T.C.Nos.88 to 91 of 2016, 94 & 95 of 2016, 97 & 98 of 2016 & 257 of 2017.

3. Though very many grounds have been raised in the present petitions, learned counsel for the petitioner submits that the trial Court dismissed the complaint given by the petitioner as non-prosecution without affording an opportunity of personal hearing by invoking Section 256 of the Code of Criminal Prosedure, 1973 and also erred in acquittig the respondents which is *per se* unsustainable. Hence, he prayed this Court to set aside the order dated 03.03.2023 and remit the matter to the trial Court by fixing an outer limit time to dispose of the complaint filed



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by the petitioner.

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

5. 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 respondents. The said act of the court below in acquitting the respondents 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.



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6. Accordingly, for the reasons aforesaid, the orders passed by the learned Judicial Magistrate – I, Tirupattur, Vellore District in S.T.C.Nos.88 to 91 of 2016, 94 & 95 of 2016, 97 & 98 of 2016 & 257 of 2017 are set aside and the matters are remitted to the trial Court for fresh adjudication. The petitioner is directed to appear before the court on the date fixed and let in evidences on behalf of the municipality before the trial Court and the respondents are 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 complaints 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 complaints 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.



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M.DHANDAPANI , J.

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7. With the above direction these criminal original petitions are disposed of. Consequently, the Criminal Appeals are closed at the SR stage itself.

18.06.2024

Index: Yes/No

Internet: Yes/No

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To

Judicial Magistrate, No.1, Thirupattur, Vellore District

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