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Cr.A.No.4/2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SHAMIM AHMED

Cr.A.No.4 of 2022

Thiru.Sakthikumar

...

Appellant

/vs/

Thiru Jaisankar

...

Respondent

Prayer : Criminal Appeal filed under section 378 of Cr.P.C., praying to set aside the order dated 28.09.2021 made in STC No.20 of 2021 passed by the learned Judicial Magistrate, Fast Track, Attur.

For Appellant

...

Ms.Sagunthala

For Respondent

...

Mr.S.Velmurugan

JUDGMENT

Heard Ms. Sakunthala, learned counsel for the appellant and Mr.S.Velmurugan, learned counsel appearing for the respondent.

2. This Criminal Appeal has been directed against the order passed by the learned Judicial Magistrate, Fast Track Court, Attur in STC.No.20 of 2021. The operative portion of the order impugned is extracted hereunder.

'This case having been Judicial Magistrate No.1



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Court taken on file on 04.02.2021, this Court taken on file on 16.03.2021.

2. Accused present. Complainant called absent. No representation. Appearance of PW1 (Fi) again calling at 1.00 PM. Complainant and PW1 called absent. No representation. Hence complaint is dismissed as non appearance of complainant u/s.256 of Cr.P.C.'

3. Learned counsel for the appellant submits that the trial court dismissed the complaint filed by the appellant in STC.No.20 of 2021 only on the sole ground that the complainant was not present at the time of date fixed for hearing.

4. It was submitted by the learned counsel appearing for the appellant that due to Covid Pandemic, there was a danger of life to the persons, due to this reason, the adjournment was sought by the appellant, but the same was not considered and the trial court, vide, the impugned order dated 28.09.2021, dismissed the complaint case in STC.No.20 of 2021. Thus the appellant was not given adequate opportunity to present his case and to adduce any evidence. Thus, it was argued on behalf of the appellant that the matter may be remanded back to the trial court to contest the case on merits after considering the entire evidence on record. She also submits that sufficient cause has also been mentioned in the grounds of appeal for



non appearance of the appellant.

5. It was further submitted by the learned counsel for the appellant that the respondent had borrowed a sum of Rs. 9 lakhs from the appellant on 25.10.2020 to meet his personal expenses and further agreed to pay the interest for the aforesaid sum at the rate of 12% per annum. In view of the borrowal of loan amount, the respondent had issued post dated cheque bearing No 000003 drawn at the HDFC Bank, Attur Branch dated 25.11.2020 for the aforementioned principal sum of Rs.9 lakhs.

6. Learned counsel for the appellant further argued that as the respondent failed to return the aforementioned amount as promised to the appellant, he has presented the aforesaid post dated cheque with his Banker viz, Tamilnadu Mercantile Bank Ltd, Attur Branch on 28.12.2020, but the said cheque was returned vide memo dated 29.12.2020 with the endorsement 'Account closed'. Thereafter, the appellant issued a legal notice dated 31.12.2020 to the respondent, but no reply has been sent by the respondent and thereafter, the appellant filed a complaint in STC.No.20 of 2020 before the Judicial Magistrate, Fast Track Court, Attur.

7. In the said complaint filed by the appellant, the respondent also put his appearance and the trial was commenced and thereafter, the case was adjourned on the ground of Covid Pandemic as there was danger to the life



of the persons. During that period, there was lock down in the entire country. The appellant on 02.09.2021, has filed his proof affidavit and marked documents Ex.P.1 to Ex.P.5 and the case was posted for cross examination.

8. The matter was listed on 28.09.2021, but the complainant and his counsel could not appear due to some personal commitment and due to Covid 19 Panemic. In this regard, an application under section 256 of Cr.P.C., was filed by the Junior of the counsel for the complainant/appellant. This fact has been stated in paragraph 5 of the Grounds, but the same was not accepted by the learned trial Judge and without considering the ground taken in the application filed under section 256 Cr.P.C, the learned trial court recording this fact in the impugned order that the complainant did not appear, dismissed the complaint, in his absence, vide impugned order dated 28.09.2021, which is under challenge before this court under the present appeal.

9. Learned counsel for the appellant further submitted that the said impugned order dismissing the complaint was not by a speaking order and no reason has been assigned. Only due to non appearance of the complainant and his counsel, the learned trial Judge, without considering the ground taken in the application filed under section 256 Cr.P.C., in which, reason and sufficient cause for non appearance has been stated,



dismissed the complaint which caused prejudice to the appellant and it was also not considered by the learned trial court that there is no denial of issuance of cheque by the respondent, nor he denied his signature on the cheque issued by him. Thus, it was argued by the learned counsel for the appellant that the matter be remanded to the trial court to decide afresh on merits after hearing both parties and after considering the entire evidence on record presented by both the parties in the interest of justice. It was further argued that the reason and sufficient cause mentioned in the application filed by the appellant under section 256 Cr.P.C., has to be considered by the trial court before passing the impugned order dismissing the complaint of the appellant, thus the order is bad in the eye of law.

10. Mr.S.Velmurugan, learned counsel for the respondent, opposing the entire argument advanced by the learned counsel for the appellant, submitted that the complainant has been sought adjournments before the trial court and he did not appear in the case before the trial court to argue the matter and on the date fixed i.e., 28.09.2021 also the complainant and his counsel did not appear before the trial court. Hence, the trial court dismissed the complaint. He also submitted that the disputed cheque was not issued in favour of the appellant, but a blank cheque was given to some other person, but the same was used by the appellant in his name. Thus the present appeal be dismissed, as there is no merit in the case.



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11. After considering the argument as advanced by the learned counsel for the parties, after perusal of record and the impugned order, this court is of the view that the impugned order is totally non speaking and the same is passed without assigning any reason and the complaint was dismissed only on the ground that the complaint was absent on the date of the impugned order i.e. 28.09.2021. It transpires that the explanation as given by the appellant and for non appearance in the case ought to be acceptable and trustworthy as the appellant and his counsel were seriously contesting the case and he was the person aggrieved, thus in my view, the explanation what to say of satisfactory explanation and the trial court has to consider this aspect.

12. The expression "sufficient cause" and satisfactory explanation has been held to receive a liberal construction so as to advance substantial justice and generally a delay in preferring appeal/revision may be condoned in interest of justice where no gross negligence or deliberate inaction or lack of bona fide is imputable to parties, seeking condonation of delay. In ***Collector, Land Acquisition Vs. Katiji, 1987(2) SCC 107***, the Court said, that, when substantial justice and technical considerations are taken against each other, cause of substantial justice deserves to be preferred, for, the other side cannot claim to have vested right in injustice being done because



of a non deliberate delay. The Court further said that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

13. In ***P.K. Ramachandran Vs. State of Kerala, AIR 1998 SC 2276***

the Court said:

"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds."

14. The Rules of limitation are not meant to destroy rights of parties.

They virtually take away the remedy. They are meant with the objective that parties should not resort to dilatory tactics and sleep over their rights. They must seek remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The statute relating to limitation determines a life span for such legal remedy for redress of the legal injury, one has suffered. Time is precious and the wasted time would never revisit. During efflux of time, newer causes would come up, necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The statute providing limitation is founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). It is for this reason that



when an action becomes barred by time, the Court should be slow to ignore delay for the reason that once limitation expires, other party matures his rights on the subject with attainment of finality. Though it cannot be doubted that refusal to condone delay would result in foreclosing the suiter from putting forth his cause but simultaneously the party on the other hand is also entitled to sit and feel carefree after a particular length of time, getting relieved from persistent and continued litigation.

15. There is no presumption that delay in approaching the court is always deliberate. No person gains from deliberate delaying a matter by not resorting to take appropriate legal remedy within time but then the words "sufficient cause" show that delay, if any, occurred, should not be deliberate, negligent and due to casual approach of concerned litigant, but, it should be bona fide, and, for the reasons beyond his control, and, in any case should not lack bona fide. If the explanation does not smack of lack of bona fide, the Court should show due consideration to the suiter, but, when there is apparent casual approach on the part of suiter, the approach of Court is also bound to change. Lapse on the part of litigant in approaching Court within time is understandable but a total inaction for long period of delay without any explanation whatsoever and that too in absence of showing any sincere attempt on the part of suiter, would add to his negligence, and would be relevant factor going against him.



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16. I need not to burden this judgment with a catena of decisions explaining and laying down as to what should be the approach of Court on construing "sufficient cause" and it would be suffice to refer a very few of them besides those already referred.

17. In ***Pundlik Jalam Patil (dead) by LRS. Vs. Executive Engineer, Jalgaon Medium Project and Anr.(2008) 17 SCC 448***, in para 17 of the judgment, the Court said :

"...The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and state claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and "do not slumber over their rights."

18. In ***Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, 2012 (5) SCC 157***, in para 18 of the judgment, the Court said as under:

"What needs to be emphasized is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression 'sufficient cause' would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bonafides, then it may condone the delay. If, on the



other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."

19. In ***Shakuntala Devi Jain Vs. Kuntal Kumari, AIR 1969 SC 575***

a three Judge Bench of the Court said, that, unless want of bona fide of such inaction or negligence as would deprive a party of the protection, the application must not be thrown out or any delay cannot be refused to be condoned.

20. The Privy Council in ***Brij Indar Singh Vs. Kanshi Ram ILR***

(1918) 45 Cal 94 observed that true guide for a court to exercise the discretion is whether the appellant acted with reasonable diligence in prosecuting the appeal. This principle still holds good inasmuch as the aforesaid decision of Privy Council as repeatedly been referred to, and, recently in ***State of Nagaland Vs. Lipok AO and others, AIR 2005 SC 2191.***



21. It also appears from the arguments advanced by the learned counsel for the appellant that neither there is denial of the signature on the cheque, nor there is denial of cheque amount, but the ground which was taken that a fake cheque was given to some other person was used by the appellant have no force at all as the respondent has to deny the signature on the cheque and he also did not deny there is no debt or liability due against the respondent towards the appellants which is mandatory as per section 138 of the Negotiable Instruments Act.

22. Even though from a bare perusal of the impugned order, which find place at page 17 of the paper book, the impugned order is totally non speaking and only a recital has been made that the complainant was absent on that day when the matter was fixed for hearing, whereas, the application under section 256 of Cr.P.C., was also filed by the counsel for the appellant which was not considered by the learned trial court before passing the impugned order dismissing the complaint, the court must have taken a liberal view and adjourned the case.

23. In my view, the impugned order is totally non speaking without assigning any reason and is against the principles of natural justice. Thus, this court is of the view that the impugned order is liable to be set aside and the matter be remanded to trial court to decide the matter afresh after giving opportunity to the parties and after considering the entire evidence



adduced by the parties concerned.

24. Accordingly, the impugned order dated 28.09.2021 passed by the learned Judicial Magistrate, Fast track Court, Attur, Salem in STC.No.20 of 2021 is **hereby set aside and reversed**. The appeal is **Allowed**. The matter is hereby remanded back to the trial court to decide afresh within a period of four months from the date of the order after giving opportunity to both the parties to adduce the entire evidence.

25. It is made clear that the parties shall not seek any adjournment and shall appear on the dates fixed by the trial court for hearing to argue the case, unless there is any cogent reason and they shall cooperate for the trial and disposal of the case.

26. With the above direction, the Criminal Appeal is allowed. There shall be no order as to costs.

13.12.2024

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Index:yes
Internet: yes
To

The Judicial Magistrate Fast Track Court, Attur,
Salem District.



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SHAMIM AHMED, J.

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