



Crl.A.No.71 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.71 of 2024

S.Santhi,
Proprietor of M/s.Santhi Tex,
D.No.61/44, Karungalpatti Street No.2,
Karungalpatti,
Salem-636 006.

... Appellant

Vs.

Rajeshwari,
Proprietor of Parambarian Silks,
No.4, Murugan Koil Street,
Near Murugan Koil, Fairlands,
Salem-636 016.

... Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to set aside the docket order passed in S.T.C.No.6453 of 2022 on the file of the Judicial Magistrate No.III, Salem, dated 12.09.2023 and allow this appeal.

For Appellant : Mr.R.Kumarasamy

JUDGMENT

This Criminal Appeal has been filed to set aside the impugned docket order, dated 12.09.2023 in TNSA040038882022 passed by the learned Judicial Magistrate No.III, Salem.



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2.While granting leave for filing the present Criminal Appeal, this Court on 04.01.2024 passed the following order:

“This petition has been filed seeking to grant special leave to the petitioner to file the above criminal appeal.

2.The petitioner as complainant had filed a private complaint under Section 138 of the Negotiable Instruments Act, which has been assigned with Filing No.TNSA040038882022 and the same was kept pending. It is seen that after filing the complaint neither the complainant nor her Advocate represented before the Trial Court when the case was called. Finally, the Trial Court on 12.09.2023 dismissed the complaint, against which, the present appeal has been filed.

3.The learned counsel for the petitioner submits that the petitioner being a lady was affected with jaundice and taken native treatment. Further, the jaundice relapsed and she was under treatment and her movements were restricted. Though the counsel before the Lower Court was informed about the same, he has not appeared and represented the same before the Court. Hence, the complaint has been dismissed. He further submitted that



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the respondent herein had issued a cheque for discharge of the liability to the tune of Rs.5,98,706/-, which is the amount due during the business transaction. The learned counsel further submitted that substantial justice would be denied to the petitioner and the purport of Section 138 of the Negotiable Instruments Act would be lost, if the appeal is not entertained.

4.Finding reason and force in the petitioner's submission, this Court is inclined to grant leave. Accordingly, leave is granted.”

3.Notice to the respondent is dispensed with since the sworn statement is yet to be taken on file. Hence, no prejudice would be caused to the respondent herein.

4.Considering the submissions and on perusal of the materials, it is seen that the petitioner as a complainant presented the complaint before the Trial Court on 25.03.2022 and thereafter, Filing No.TNSA040038882022 assigned. Then the complaint was listed during the months of April and May 2022 but periodically adjourned. On



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03.08.2022, local holiday was declared, therefore, the case was adjourned to 26.08.2022. Finally, the complaint posted on 03.09.2022. Till then, the learned counsel for the petitioner before the Court below followed the case. On 12.09.2023, the petitioner's counsel absent and the petitioner was suffering from Jaundice and she was confined to bed and was taking native medicine. During this period, the Jaundice relapsed but she was under treatment for several months. On 12.09.2023, the Court below dismissed the complaint due to non-appearance of the petitioner and failed to give sworn statement and to file proof affidavit.

5.It is submitted by the learned counsel for the petitioner that in this case, the petitioner has to give sworn statement as well to file proof affidavit before the Court below. Now, the learned counsel for the petitioner undertakes to diligently prosecute the complaint without any delay henceforth.

6.Finding that substantial justice can be done only after ful-fledged trial, this Court is inclined to set aside the impugned order, dated 12.09.2023.



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7. Accordingly, the impugned docket order, dated 12.09.2023 in Filing No.TNSA040038882022 passed by the learned Judicial Magistrate No.III, Salem is set aside and this Criminal Appeal stands allowed.

8. The complaint in Filing No.TNSA040038882022 is restored on the file of the Judicial Magistrate Court No.III Salem. The petitioner is directed to appear before the learned Judicial Magistrate No.III, Salem on 15.02.2024 to prosecute the complaint without delay.

22.01.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

The Judicial Magistrate No.III,
Salem.



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M.NIRMAL KUMAR, J.
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