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Crl.R.C.No.1840 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM :

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1840 of 2024

Sathish Raja

... Petitioner

Versus

Ramesh

... Respondent

PRAYER : Criminal Revision petition filed under Sections 438 r/w. 442 of Bharatiya Nagarik Suraksha Sanhita, 2023 praying to call for the records in S.T.C.No.602 of 2022 on the file of learned Metropolitan Magistrate, FTC-4, George Town, Chennai and set aside the order dated 19.08.2024 as illegal and abuse of process of law and allow the criminal revision.

For Petitioner : Mr.A.Vinupradha

ORDER

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This revision petition has been filed seeking to set aside the order passed in S.T.C.No.602 of 2022 on the file of learned Metropolitan Magistrate, Fast Tract Court-IV, George Town, Chennai dated 19.08.2024.



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2.The petitioner as complainant filed a private complaint against the respondent for offence under Section 138 of the Negotiable Instruments Act in S.T.C.No.602 of 2022. After taking cognizance of the case, notice was ordered to the respondent and the respondent was evading notice. Fresh notice was ordered on 08.07.2022 and on 26.09.2022 with the same status the case was adjourned to 01.11.2022. On 01.11.2022, summons served, affidavit of service filed, respondent/accused was absent. Recording the same, the case was posted for appearance of the respondent/accused on 22.11.2022. On that day the respondent failed to appear, hence bailable warrant issued and the bailable warrant was pending for several hearings and finally on 28.02.2024 finding that bailable warrant not executed, Non-bailable warrant was issued against the respondent and the case was posted on 21.05.2024. On 21.05.2024, for pendency of Non-bailable warrant the case was adjourned to 19.08.2024. On 19.08.2024, there was no representation for the petitioner. For absence of one hearing, the complaint was dismissed under Section 227 and 279 of BNSS, against which, the present revision is filed.



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3.The contention of the learned counsel for petitioner is that the petitioner is a medical dealer. The respondent purchased medicines from the petitioner and he also sold the same, received cash but not paid the sale amount covered by invoices. In discharge of the said liability the respondent gave a cheque, which got dishonoured, thereafter, the case filed. The respondent is very much available and carrying on business in the address mentioned in the complaint. It is also to be seen that at the stage of summons, thereafter at the stage of bailable warrant, now at the stage of Non-bailable warrant the respondent is evading service and it is difficult to execute Non-bailable warrant, since the respondent herein is familiar with the local police, hence, could not be executed. On 19.08.2024, the petitioner was unable to reach the Court within time, since the petitioner was held up in traffic jam. But the trial Court not considered the same and the case was not kept pending for the appearance of the petitioner. At the stage of Non-bailable warrant the trial Court ought to have adjourned the case to some other day but dismissed the same. Hence, prayed for setting aside the impugned order.



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4.It is seen that the complaint in S.T.C.No.602 of 2022 was dismissed on technical grounds for non-prosecution and non-payment of process fee and not on merits. Hence, no prejudice would be caused to the respondent in the event of restoring the complaint. Hence, notice to the respondent is dispensed with. It is also seen that on 19.08.2024, the case was not posted for the appearance of the petitioner. Hence, the absence of the petitioner would no way affect the progress of the trial.

5.In view of the same, the impugned order dated 19.08.2024 passed by the learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai is set aside and the complaint in S.T.C.No.602 of 2022 is restored on the file of Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai.

6.The learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai is directed to complete the proceedings in



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S.T.C.No.602 of 2022 without any further delay, preferably within a period of three months from the date of receipt of a copy of this order.

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7.With the above directions, the Criminal Revision Case is allowed.

29.10.2024

Index : Yes / No
Internet : Yes/No
Speaking / Non-speaking order
Neutral citation : Yes/No
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To

1.The Metropolitan Magistrate,
Fast Tract Court-IV,
George Town, Chennai.

2.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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