



CrI.A.No.367 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.367 of 2024

V.Narmada

... Appellant

Vs.

R.Palanisamy

... Respondent

PRAYER: Criminal Appeal filed under Section 378 of Code of Criminal Procedure, to set aside the order of Acquittal in the order dated 07.09.2022 made in C.C.No.7538 of 2017 by the Metropolitan Magistrate, Fast Track Court No.I, Egmore @ Allikulam, Chennai by allowing this criminal appeal.

For Appellant : Mr.K.Kathiresan

For Respondent : Mr.S.Parthasarathy

JUDGMENT



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The appellant as a complainant filed a private complaint under Section 138 of the Negotiable Instruments Act, 1881 against the respondent in C.C.No.7538 of 2017 before the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore @ Allikulam, Chennai/Trial Court and the complaint was dismissed for non-prosecution on 07.09.2022. Against which, the present criminal appeal is filed.

2.The learned counsel for the appellant/complainant submitted that the appellant is an aged woman and she suffered with COVID-19 infection. Due to which, she was advised to take bed rest and after sustained medication, she is now surveying and able to move. The appellant came to know about the dismissal of her complaint only at a later point of time and she immediately filed the present appeal. The learned counsel further submitted that the complaint only dismissed on technical ground but not on merits, hence the substantial right of the appellant denied.

3.The learned counsel for the respondent/accused strongly objected the submissions of the learned counsel for the appellant stating that the



entire transaction between the appellant and respondent took place in Erode and the cheque issued in Erode. According to the respondent, entire liability settled but using stale cheque, the present complaint lodged by the appellant in Chennai just to cause harassment to the respondent. The respondent is an aged person who is made to travel all the way from Gobichettipalayam to Chennai and put to undue hardship from the year 2017. Finding that the case kept pending several years without any progress, the Trial Court rightly dismissed the complaint which needs no interference of this Court.

4.Considering the submissions and on perusal of the materials, it is seen that after filing of the complaint, the appellant not took any steps in prosecuting the complaint. The respondent who hails from Erode made to suffer travel all the way to attend the Court in Chennai. The Trial Court by judgment, dated 07.09.2022 dismissed the complaint recording that despite several opportunities given to the appellant, the trial is yet to commence, two notices sent and final notice sent on 28.06.2022. On 07.09.2022, the case called twice. Finding no representation, the complaint dismissed on technicality under Section 256 Cr.P.C and not on merits. Real and substantial justice could be done for both the complainant as well as accused



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only after ful-fledged trial.

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5.In view of the above, this Court set asides the impugned judgment dated 07.09.2022 in C.C.No.7538 of 2017 passed by the learned learned Metropolitan Magistrate, Fast Track Court No.I, Egmore @ Allikulam and the complaint in C.C.No.7538 of 2017 is restored to file.

6.The appellant to complete the examination of witnesses then and there and cooperate with the trial without any further delay. The respondent to cross examine the witnesses and examine defence witnesses then and there. The Trial Court to ensure that the trial is concluded within a period of three months from the date of receipt of a copy of this order.

7.Finding that the respondent hails from Gobichettipalayam and aged about 71 years, the Trial Court to entertain the petition under Section 317 Cr.P.C of the respondent without any objection. The respondent is directed to appear before the Trial Court when his presence is absolutely necessary.



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WEB COPY 8.In the result, this criminal appeal stands allowed.

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

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To

The Metropolitan Magistrate,  
Fast Track Court No.II,  
Egmore at Allikulam.

Note: Issue Order Copy on 05.09.2024.

M.NIRMAL KUMAR, J.

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