



Crl.R.C.(MD) No.712 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

Crl.R.C.(MD) No.712 of 2023

Murugan

...Petitioner / Complainant

Vs.

Kavitha

...Respondent/ Accused

PRAYER : Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the judgment in S.T.C.No.2130 of 2022 dated 01.03.2023, passed by the learned Judicial Magistrate No.II, Kuzhithurai, and set aside the same and allow the Criminal Revision Case.



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For Petitioner : Mr.B.Christopher

For Respondent : Mr.G.Ramanathan

ORDER

Challenging the order, dated 01.03.2023 passed by the learned Judicial Magistrate No.II, Kuzhithurai, in S.T.C.No.2130 of 2022, the petitioner has come forward before this Court with the present Criminal Revision Petition.

2. The learned counsel for the petitioner would submit that the petitioner filed a complaint under Section 200 of Cr.P.C. for an offence under Section 138 of Negotiable Instruments Act against the respondent and the same was taken on file in STC.No.2130 of 2022, on the file of the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District and the said case was scheduled for hearing on 01.03.2023. On that day, the petitioner did not appear before the learned Judicial Magistrate No.II, Kuzhithurai. Moreover, his counsel



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could not attend the Court and file a petition for non-appearance since the entire Advocates practicing in Kuzhithurai Court abstained from work based on a resolution of their Bar Association. The non-appearance of the petitioner is neither wilful nor wanton but only due to his illness, he was unable to appear on 01.03.2023. Nevertheless, the same was dismissed by the learned Judicial Magistrate No.II, Kuzhithurai. The learned counsel further submitted that due to boycott, the counsel has not represented the petitioner and filed a petition under Section 256 Cr.P.C. and hence, prayed for setting aside the order passed by the learned Judicial Magistrate No.II, Kuzhithurai, in S.T.C.No.2130 of 2022, dated 01.03.2023.

3. In support of his contention, the learned counsel for the petitioner has also relied upon a case which is of similar in nature viz., ***BLS Infrastructure Limited Vs. Rajwant Singh and Others*** reported in **2023(2) CTC 475**, wherein, the Hon'ble Supreme Court has allowed the Petition and therefore, pleaded that the instant case may be allowed based on the said footing. The relevant paragraph of the



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aforesaid decision reads as follows :

“13.....

Further, if the Complainant had not appeared to press the application under Section 311 of the Code, the learned Magistrate could have rejected the application under Section 311 of the Code and proceeded with the case on basis of the available evidence. We are, therefore, of the considered view that the learned Magistrate was not justified in straightaway dismissing the complaint(s) and ordering acquittal of the accused on mere non- appearance of the complainant. The High Court too failed to take notice of the aforesaid aspects. Thus, the orders impugned are liable to be set aside.”

4. The learned counsel for the respondent submitted that the petitioner has not appeared continuously for three hearings before the trial Court i.e., on 20.02.2023, 24.02.2023 and 01.03.2023 and hence, the learned Judicial Magistrate had dismissed the complaint on 01.03.2023 and prays for dismissal of the Criminal Revision Case.



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5. Heard Mr.B.Christopher, learned counsel for the revision petitioner and Mr.G.Ramanathan, learned counsel appearing on behalf of the respondent and perused the materials available on record.

6. The learned counsel for the petitioner would further submit that he has a good case before the Court below and he may be given a last chance to contest his case on merits and prays to allow this Criminal Revision Case.

7. Considering the nature of the relief and in order to afford an opportunity to the petitioner to put-forth his case on merits before the Court below, the petitioner must be given an opportunity to contest the case.

8. Considering the submissions made by the learned counsel for the petitioner and also taking note of the facts and circumstances of the case, the Criminal Revision Case is allowed and the order passed



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by the learned Judicial Magistrate No.II, Kuzhithurai, in S.T.C.No. 2130 of 2022 dated 01.03.2023 is set aside and the same is restored to file. The learned Judicial Magistrate No.II, Kuzhithurai, is directed to dispose of the S.T.C.No.2130 of 2022 pending on his file, on merits and in accordance with law, as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order.

24.01.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes / No

RM



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To

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1. The Judicial Magistrate No.II,
Kuzhithurai,
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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VIVEK KUMAR SINGH, J.

RM

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