



Crl.R.C.(MD).No.650 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2023

Pronounced on : 19.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)No.650 of 2023

N.Pappukumar

... Petitioner/Complainant

Vs.

A.Mariappan

... Respondent/Accused

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records from the learned Judicial Magistrate, (Special Court for the exclusive Trial of NI Act Cases), Tirunelveli District, in S.T.C.No. 184 of 2019 and set aside the order dated 10.08.2022 by allowing this revision petition.

For Petitioner : Mr.D.Selvanayagam

For Respondent : No Appearance

ORDER

This revision has been filed to set aside the order passed by the learned Judicial Magistrate, (Special Court for the exclusive Trial of NI Act Cases), Tirunelveli District, in S.T.C.No.184 of 2019, dated 10.08.2022.



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2. The petitioner is the defacto complainant in S.T.C.No.184 of 2019 on the file of the learned Judicial Magistrate, (Special Court for the exclusive Trial of NI Act Cases), Tirunelveli District.

3. The respondent herein borrowed an amount of Rs.2,00,000/- from the petitioner/complainant on 01.05.2018. To discharge the debt, he issued a cheque bearing No.909813 to the petitioner on 13.06.2019. The same was presented by the petitioner with his banker and the same was returned with an endorsement 'Payment Stopped by the Drawer' on 14.06.2019. Therefore, he issued a legal notice to the respondent on 26.06.2019. The respondent refused to receive the same and hence, he filed a complaint under Section 138 of Negotiable Instrument Act, before the learned Judicial Magistrate No.I, Tirunelveli, and the same was taken on file and the summons was issued to the respondent. Thereafter, the case was transferred to the learned Judicial Magistrate, (Special Court for the exclusive Trial of NI Act Cases), Tirunelveli District, vide communication official memorandum dated 26.11.2019 and new S.T.C.184 of 2019 was assigned and the case listed on 11.03.2020. On that day, the petitioner was present and directed to take service to the accused and listed the case on 14.05.2020. Due to the Covid-19 lock down, the case was periodically adjourned



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upto 19.11.2020 and following dates. Due to the Corona second wave complication, the petitioner has not appeared before the Court and has not paid Batta. Hence, the learned trial Judge dismissed the complaint on the ground of non payment of Batta by passing the impugned order dated 10.08.2022. Challenging the same, the petitioner filed this revision to set aside the same and restore the S.T.C.No.184 of 2019 on file.

4. The learned counsel for the petitioner submitted that the complaint was presented on 22.08.2019 before the learned Judicial Magistrate No.I, Tirunelveli. After taking sworn statement, summons was issued for the appearance of the respondent. Thereafter, the same was transferred to the present Court namely, the learned Judicial Magistrate, (Special Court for the exclusive Trial of NI Act Cases), Tirunelveli District. The record was received only on 24.01.2020. The same was not informed to the petitioner/complainant and hence, on that day, there was no representation. The case was adjourned to 11.03.2020. On that day, the complainant was present and summons was issued to the accused and the matter was posted on 14.05.2020. Covid 19 lockdown was announced on 20.03.2020 and hence the case was adjourned on account of Covid lock down upto 19.11.2020. Thereafter, the case was listed on 03.03.2021 and the petitioner



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was present and summons was issued to the accused and the case was posted to 04.05.2021. Thereafter, on 16.08.2021 onwards due to the second wave there was lock down. Due to the frequent lockdowns and also the second wave caused number of deaths and due to the psychological fear during the covid-19 period, he has not appeared before the Court regularly. Hence, the dismissal of the complaint on the ground of non-payment of batta is to be set aside and give an adequate opportunity to the petitioner/complainant and permit the petitioner/complainant to conduct the case on merit.

5. Even though, notice was served to the respondent, there is no representation on behalf of the respondent.

6. This Court considered the submission of the learned counsel for the petitioner and also perused the document available on record.

7. Admittedly, the petitioner filed a complaint before the learned Judicial Magistrate No.I, Tirunelveli, on 22.08.2019. Subsequently, it was transferred to the learned Judicial Magistrate, (Special Court for the exclusive Trial of NI Act Cases), Tirunelveli District, by the order dated 17.12.2019. Thereafter, the case



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was posted before the Court on 11.03.2020 and again, it was posted on 14.05.2020. On that day, there was covid-19 lock down. Hence, the case was adjourned. Thereafter, the case was conducted through the video conference. Subsequently, due to the intensity of the second wave, many people died. Hence, there was psychological fear all over the world including India. From the record, it is seen that even prior to the covid and after covid he has appeared for number of hearings before the trial Court. But, due to the psychological fear caused during the course of second wave, the petitioner has failed to appear before the Court and make the payment for the Batta. The said reason is bonafide. Further no other circumstances are brought by the respondent to disbelieve petitioner's cause for non appearance in the Covid-19 pandemic. It is well settled principle that *the primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice*. Therefore in the interest of justice, this court is inclined to set aside impugned order of the dismissal of the complaint for non-payment of batta by allowing this revision.

9. Accordingly, the Criminal Revision Case is allowed with the following directions:-

I) The dismissal order passed by the learned Judicial Magistrate, (Special



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Court for the exclusive Trial of NI Act Cases), Tirunelveli District, in S.T.C.No., 184 of 2019 dated 10.08.2022 for the non payment of data is hereby set aside and the S.T.C.No.,184 of 2019 is restored.

ii) The petitioner/complainant is hereby, directed to appear before the learned Judicial Magistrate, (Special Court for the exclusive Trial of NI Act Cases), Tirunelveli District on 04.02.2024 and file necessary Batta.

iii) Thereafter, the learned Judicial Magistrate, (Special Court for the exclusive Trial of NI Act Cases), Tirunelveli District, is directed to proceed with the trial in S.T.C.No.184 of 2019 and complete the same at the earliest.

19.01.2024

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

To

- 1.The Judicial Magistrate, (Special Court for the exclusive Trial of NI Act Cases), Tirunelveli District,
2. The Section Officer,
Record Section (Criminal)
Madurai Bench of Madras High Court.



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K.K.RAMAKRISHNAN, J.

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