



Crl.A(MD)No.1092 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated	:	18.12.2024
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THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

CRL.A.(MD)No.1092 of 2024

Mathan Kumar

... Appellant

vs.

Vanniyaraja

... Respondent

PRAYER: Criminal Appeal has been filed under Section 419 (4) of BNSS, to call for the records and set aside the order passed by the Special Court for Exclusive Trial of Negotiable Instruments Act, Tirunelveli in S.T.C.No.277 of 2023 dated 07.10.2024.

For Appellant :Mr.N.Mohideen Basha

For Respondent :Mr.S.Sathyachidambaram

JUDGMENT

The appellant, who is the complainant in S.T.C. No.277 of 2023, filed the complaint under Section 138 of the Negotiable Instruments Act against the respondent for the alleged dishonour of a cheque for Rs. 20,00,000/-, said to have been issued towards discharge of a legally



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enforceable debt, bearing No.192118 dated 10.11.2022. The complaint was dismissed for non-prosecution under Section 256(1) Cr.P.C. by the impugned order dated 07.10.2024, which is challenged in the present appeal.

2.The case of the complainant is as follows:

The accused borrowed a sum of Rs.20,00,000/- on 27.08.2019 and promised to repay the same within a period of three years. Towards discharge of the said liability in part, he issued a cheque bearing No. 192118 dated 10.11.2022 for a sum of Rs.10,00,000/-. The cheque, when presented by the complainant through his bank, was returned on 25.01.2023 with the endorsement “insufficient funds.” Thereafter, the appellant issued the statutory legal notice to the respondent. Though the respondent received the same, he neither repaid the cheque amount nor sent any reply. Hence, the appellant filed a complaint under Section 138 of the Negotiable Instruments Act before the Special Judge for Exclusive Trial of Cases under the Negotiable Instruments Act, and cognizance was taken in S.T.C. No.277 of 2023. As there was no appearance on the part of the accused, a bailable warrant was issued on 28.06.2023.



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Subsequently, the learned trial Judge dismissed the case by the impugned order under Section 256 Cr.P.C., on the ground that the complainant failed to appear for cross-examination. The impugned order in S.T.C.No. 277 of 2023 dated 07.10.2024 reads as follows:

The complainant has filed this complaint against the accused under Section 138 of the Negotiable Instrument Act, 1882. In spite of sufficient opportunity given to complainant, on that day case has been pass over and taken up again at 15.50 pm., but the complainant have failed to appear before this Court. Instead the complainant have filed petition under Section 279 of BNSS for absence of complainant. It seems that complainant is not in the interest to proceed the case against the accused. Hence, this case is dismissed for want to prosecution and for absence of the complainant under Section 256 of Cr.P.C.

Challenging the same, the present appeal has been filed before this Court.

3.The learned counsel for the appellant submitted that the appellant had been regularly appearing before the learned trial Judge from 03.05.2023 onwards and had duly complied with all directions of



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the Court. The accused did not appear even after receipt of summons and, therefore, a bailable warrant was issued, which was executed only on 28.06.2023. Thereafter, the accused filed a petition under Section 70(2) Cr.P.C. to recall the non-bailable warrant, which was allowed on 08.01.2024. Subsequently, a bailable warrant was issued on 15.11.2023 and a non-bailable warrant on 05.01.2024, which was recalled on 08.01.2024 upon the accused undertaking to cross-examine the complainant on 09.02.2024. Thereafter, the matter was referred to the National Lok Adalat held on 09.03.2024, but no settlement was arrived at and the case was remitted to the regular Court on 15.05.2024. Once again, the matter was referred to the National Lok Adalat on 08.06.2024, but as it was not settled, it was sent back to the regular Court on 20.06.2024. For the purpose of cross-examination, the case was adjourned to 25.07.2024, on which date the complainant was present but the accused was absent. Thereafter, the case was posted for further cross-examination of P.W.1/complainant on 09.08.2024, when the complainant again appeared, there was no representation on behalf of the accused. Hence, it was adjourned to 30.08.2024, on which date also the complainant was present and the accused was absent. Accordingly, the



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suffers from legal infirmity and therefore, he seeks for setting aside the order.

4.The learned counsel for the respondent submitted that though the accused was absent on 07.10.2024, that by itself is not a ground to allow the appeal, since the complainant was wilfully absent on the said date of hearing. Therefore, he sought confirmation of the impugned order.

5.This Court considered the rival submissions made by the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on record.

6.From the narration of the arguments, dates, and events, it is clear that the complainant had been regularly appearing on the material hearing dates and had prosecuted the case diligently and without fault. On the other hand, the accused initially failed to appear even after receipt of summons and did not appear despite issuance of a bailable warrant, necessitating issuance of a non-bailable warrant. Though the recall petition filed by the accused was allowed with a condition to appear for



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2023 and there was no wilful negligence on his part on earlier occasions.

Therefore, this Court finds that the impugned order of the learned trial Judge suffers from infirmity in all respects. The complainant had prosecuted the case diligently, and in the absence of wilful default, dismissal of the complaint under Section 256 Cr.P.C. was unwarranted. Accordingly, the impugned order dated 07.10.2024 is perverse and liable to be set aside.

7.In view of the above circumstances, this Court finds that there was no wilfull and intentional lapse on the part of the complainant to prosecute the case. The substantial justice can be ensured to the appellant only after full-fledged trial and not by short circuit method of dismissal of the complaint.

8.Apart from that, as per the law laid down by this Court in AIR 2008 (NOC) 150, if the complainant was absent on the date, it is the duty of the Court to give opportunity and issue notice to the complainant and without issuing such notice adopting the procedure by dismissing the complainant under Section 256 (1) of Cr.P.C., is not appreciable. Hence,



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this Court is inclined to allow this appeal.

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9. Accordingly, this appeal is allowed in the following terms:

(i) The order passed by the learned Special Judge for Exclusive Trial of cases under Negotiable Instruments Act, Tirunelveli, in S.T.C.No.277 of 2023 dated 07.10.2024, is hereby set aside.

(ii) The learned trial Judge is hereby directed to proceed with the trial and complete the same within a period of three months from the date of receipt of a copy of this order.

18.12.2024

Index : Yes / No

Internet : Yes / No

NCC : Yes / No

sbn

To

1. The learned Judicial Magistrate,
Special Court for Exclusive Trial of Cases under
Negotiable Instrument Act,
Tirunelveli.

2. The Section Officer,
Record Section (Criminal)
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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