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CrI.A.No.237 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.237 of 2022

N.Ramanan.

Son of Nagarajan,

No.179, Chettikulamedu,

Polur Road,

Tiruvannamalai Town & District.

... Appellant/Complainant

Vs.

S.Prasath Kumar,

Son of Somuraj,

No.657/1, Indira Nagar,

Tiruvannamalai Town & District.

... Respondent/Accused

Prayer: Criminal Appeal has been filed under Section 378 (4) of Cr.P.C., 1908, to call for the records and set aside the order dated 17.08.2021 passed in S.T.C.No.65 of 2013 by the Hon'ble Judicial Magistrate Court, Fast Track Court (Magistrate Level), Tiruvannamalai and convict the respondent/accused in the above case.

For Appellant : Mr.J.Jagan

For Respondent : Notice dispense with



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ORDER

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The appellant/complainant has filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondent in S.T.C.No.65 of 2013. The respondent/accused had been evading service before the trial Court. The trial Court issued a bailable warrant against the respondent/accused on 27.04.2019. Thereafter, finding that the petitioner had not paid the process fees, the trial Court failed to execute the bailable warrant. Since the appellant failed to appear before the trial Court on 17.08.2021, either personally or through counsel, the trial court dismissed the private complaint filed by the petitioner/complainant in S.T.C. No. 65 of 2013 for non-prosecution. As a result, the present criminal appeal and application for leave to grant were filed in Crl.O.P.No.6370 of 2022.

2. The Learned Counsel for the petitioner submitted that the respondent/accused herein is doing Garment Business and for the purpose of his business he approached the complainant and borrowed a sum of Rs.7,00,000/- on 10.06.2011, agreeing to repay the same with 12% interest per annum and later when discharge of the principal amount liability, the respondent/accused issued a cheque No.769979, dated 12.12.2011 for Rs.7,00,000/-. The cheque was deposited on 09.02.2012 and same was returned for the reason 'Funds Insufficient' on



10.02.2012. Thereafter, legal notice was sent following the statutory conditions and the complaint was lodged before the Judicial Magistrate No.1, Tiruvannamalai in S.T.C.No.282 of 2012 and later it was transferred and renumbered as S.T.C.No.65/2013 to the file of Judicial Magistrate, Fast Track Court, Tiruvannamalai.

3. The case was taken on file and summons were ordered to be issued to the respondent/accused. The complainant diligently followed up on the case, appeared before the trial court and process was taken for summons from 05.09.2012 to 07.11.2019. On 03.02.2021, summons were served to the respondent. Despite the summons being served, the respondent did not appear before the trial Court. Hence, bailable warrant was issued on 27.04.2019. Though the petitioner had taken steps to execute the bailable warrant, he was unable to do so. On 17.08.2021, the petitioner/complainant, due to sudden ill-health, was unable to appear before the trial Court and also informed his counsel. The trial Court dismissed the complaint for non-prosecution, which is improper. Dismissing the complaint without considering it on merits amounts to a denial of justice to the petitioner/complainant.



4. Hence, in order to render substantial justice, the complaint to be taken on file and disposed on its merits. It is seen that the appellant filed the complaint and thereafter, he had been diligently following it up. Subsequently, bailable warrant has been issued. Though the complaint has been filed in the year 2012, the complainant appeared before the trial Court regularly till 2019 and bailable warrant is also pending against the respondent/accused. It is noted that on 17.08.2021, the complainant had not appeared and the complaint was dismissed on technical ground for non-prosecution.

5. In this case, even before the trial Court, the respondent/accused had not appeared. Therefore, notice to the respondent in deciding the appeal is not required and no prejudice would be caused.

6. In view of the above, this Court finds that the appellant had been diligently following up on the case. However, when the case was at the stage of issuing bailable warrant, for some reason, the appellant did not take steps. Due to ill-health, he was unable to appear on 17.08.2021 and the trial Court dismissed the



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complaint for non-prosecution on technical grounds. Short-circuiting the process and dismissing the complaint without considering it on merits is improper and would cause great prejudice to the appellant, amounting to denial of justice.

7. In view thereof, this Court directs the trial Court to restore S.T.C.No.65 of 2013 on file and take steps, including coercive action, against the respondent/accused if required. The appellant/complainant undertakes to co-operate before the trial Court, take all necessary steps and ensure the presence of the respondent before the trial Court to dispose of the case on its own merits, after ensuring the appearing of the respondent.

8. Accordingly, this Criminal Appeal is allowed.

13.03.2025

Speaking order/Non-speaking order

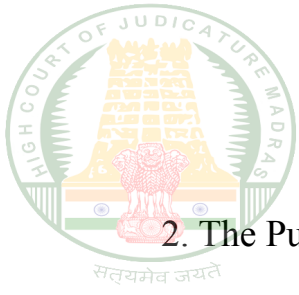
Index : Yes/No.

Neutral Citation : Yes/No.

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To,

1. The Judicial Magistrate Court,
Fast Track Court (Magistrate Level), Tiruvannamalai



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2. The Public Prosecutor, High Court, Madras.

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Note: Issue order copy today (17.03.2025)



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M.NIRMAL KUMAR, J.

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