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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.ANo.617 of 2022

Dayala Prabhakaran

... Petitioner

Vs.

S.Vinothkumar

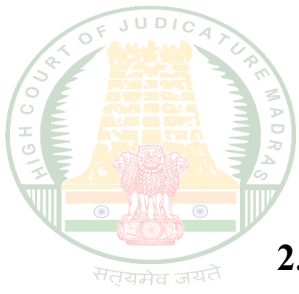
... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure, to set aside the order of dismissal, dated 23.10.2019 made in STC.No.168 of 2019, on the file of District Munsif cum Judicial Magistrate at Gummidipoondi.

For Petitioner : Mr.V.Surya Sankar

**ORDER**

The appellant/complainant filed a private complaint against the respondent under Section 138 of Negotiable Instruments Act, in S.T.C.No.172 of 2018 before the Judicial Magistrate, Ponneri. The summons to the accused were taken by the appellant and the case was at the stage of service of summons.



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2. In the meantime, due to a bifurcation, the District Munsif cum Judicial Magistrate, Gummidipoondi, was formed and the case in S.T.C.No.172 of 2018 was transferred and renumbered as S.T.C.No.168 of 2019. The petitioner was not properly informed about the transfer of the case, leading to some confusion.

3. The petitioner had appeared for previous hearings. However, the next hearing date was not clearly audible. The petitioner had appeared before the Court on 12.07.2019 and on 19.08.2019, and later on 20.09.2019, no sitting. The petitioner was not properly informed about the next hearing date. Consequently, on 23.10.2019, the case was called and dismissed for non prosecution. The summons to the respondent had not yet been served. The trial Court dismissed the case on technical grounds, not on its merits.

4. The learned counsel for the petitioner further submitted that the substantial justice can be rendered only after a full fledged trial and not by dismissal of the case.

5. Considering the submission and findings, it is evident that even before the trial Court, the respondent at the state of service of summons, the



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respondent did not appear. Since the case was at the stage of service of summons, its dismissal on technical grounds for non prosecution, rather than on merits was improper.

6. In view of the above, no prejudice will be caused to the respondent. Hence, notice to the respondent is dispensed with. Since the complaint was dismissed on technical grounds, thereby denying substantial justice to the petitioner, this Court set aside the impugned order and directs the trial Court to take the complaint on file and dispose of it on merits. The petitioner undertakes diligently pursue the complaint without any delay.

7. As a result, this Criminal Appeal is allowed.

26.02.2025

rpl

To

The District Munsif cum Judicial Magistrate at Gummidipoondi.

**M. NIRMAL KUMAR, J.**

rpl



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