



Crl.O.P(MD).No.789 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2025

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.O.P(MD).No.789 of 2025

Jeyalakshmi

... Petitioner

Vs

1. Sekar

2. Kalaiselvi

... Respondents

Prayer: Criminal Original Petition filed under section 528 of BNSS to set aside the docket return order, dated 10.10.2024 in unnumbered restore the petition in Crl M.P No. 2024 in C.C No. 143 of 2024 on the file of the Judicial Magistrate, Thuraiyur.

For Petitioner : Ms. S.Ramana

ORDER

This Criminal Original petition has been filed to set aside the docket return order, dated 10.10.2024 and restore the petition in Crl M.P No. 2024 in C.C No. 143 of 2024 on the file of the Judicial Magistrate, Thuraiyur.



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2.The petitioner has filed a private complaint against the respondents for the offence punishable under sections 494, 498(A), 506(ii) IPC and the case is pending for trial in CC No. 143 of 2014 on the file of Judicial Magistrate, Thuraiyur. On 10.08.2023, when the case was listed for hearing, since the petitioner was not aware about the death of her lawyer, she was absent. Therefore, the case was dismissed for default. The non-appearance of the petitioner is neither wilful nor wanton. Due to the unforeseen death of the lawyer, the case was dismissed for default. Therefore, the petitioner has filed a petition for restoration on 13.08.2024. The unnumbered petition was taken by the learned Magistrate on 10.10.2024 and returned the same with an endorsement that *“This Court has no power to restore the petition, hence this petition is returned”*.

3.It is the contention of the learned counsel for the petitioner that the death of her counsel was not known to the petitioner. Therefore, she could not appear before the Court on the date of hearing. The petitioner is an illiterate poor lady and she is not aware about the Court proceedings. After coming to know about the demise of her counsel, she has filed a petition for restoration. However, the trial Court dismissed the



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petition only on the grounds of technicality, not on merits.

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4.In this regard, when a suggestion was put to the learned Additional Public Prosecutor, he has submitted that since it is a private complaint, in the interest of justice, the complaint which was dismissed for default may be restored.

5.Considering the facts and circumstances of the case, this Court finds that the Court below has passed an order of dismissal for non-prosecution on 10.08.2023 only for the non-appearance of the petitioner or her counsel. Since the death of the petitioner's counsel was not known to the petitioner, the petitioner also could not attend the Court on that date. In these circumstances, the trial Court ought to have send notice to the petitioner about the non-appearance of the counsel and the intention of the Court to dismiss the complaint. However, in this case, without sending such notice to the petitioner/complainant, the trial Court on the ground of technicality, straight away dismissed the petition for default. Later, the petitioner came to know about the dismissal order for non-prosecution and filed the petition for restoration, which was returned by the trial Court.



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6.In view of the same, in the interest of justice, the impugned order, dated 10.10.2024 is set aside and the case in C.C.No.143 of 2014 is restored on file and the trial Court is directed to proceed with the trial and dispose of the case on its own merits. The petitioner is directed to co-operate with the trial process by engaging a counsel on her behalf and to prosecute the case without any delay.

7.With the above directions, this Criminal Original Petition stands disposed of.

20.01.2025

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
PNM

To
1.The Judicial Magistrate, Thuraiyur.



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M. NIRMAL KUMAR, J.

PNM

ORDER IN
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