



Crl.R.C.(MD)No.1157 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.02.2025

Pronounced on : 07.03.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.1157 of 2024

J.Jeyakumar

... Petitioner

Vs.

Paulthurai

... Respondent

Prayer : This Criminal Revision Petition filed under Sections 397 r/w 401 Cr.P.C., to call for the records pertaining to the impugned order passed by the Judicial Magistrate No.I, Kuzhithurai in S.T.C.No.1652 of 2019 dated 30.09.2022 and to set aside the same and consequently issue suitable direction to the learned Judicial Magistrate No.I, Kuzhithurai to decide the S.T.C.No.1652 of 2019 on merits affording opportunity to the petitioner.

For Petitioner : Mr.M.R.Sreenivasan

For Respondent : Mr.B.Micheal Sebastin



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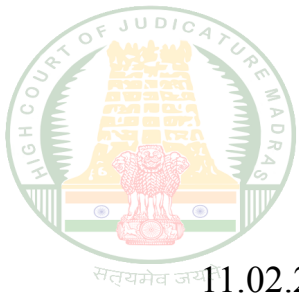
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ORDER

The Criminal Revision is directed against the order passed in S.T.C.No.1652 of 2019 dated 30.09.2022 on the file of the Judicial Magistrate No.I, Kuzhithurai, dismissing the complaint filed under Section 138 of Negotiable Instruments Act for non-prosecution and the consequent discharge of the accused.

2. The petitioner as complainant has filed a complaint under Section 200 Cr.P.C. against the respondent/accused for the offence under Section 138 r/w 142 of Negotiable Instruments Act.

3. The case of the petitioner is that the respondent borrowed a sum of Rs.3,65,000/- on 31.12.2018 from the petitioner and in order to discharge the said debt, the respondent issued a cheque on 31.12.2018 drawn on State Bank of India, Vivekanandapuram Branch, that the petitioner presented the cheque for collection on 01.02.2019 before his banker State Bank of India, Marthandam Branch but the same was returned dishonored for want of sufficient funds in the bank account of the respondent, that the petitioner has then sent a legal notice dated



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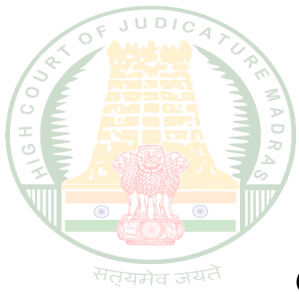
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11.02.2019 demanding the payment of the amount covered by the cheque, but the same was returned as unclaimed and that since the respondent has failed to make payment, the petitioner was constrained to lodge the above private complaint.

4. The learned Magistrate, after compliance of the necessary formalities, has taken cognizance of the case in S.T.C.No.1652 of 2019 and ordered for issuance of summons to the respondent.

5. Before entering into further, it is necessary to refer the impugned order:-

“Complainant absent. No representation. Records perused. Already sufficient time given to the complainant. Complainant failed to proceed the case. Case is in the year of 2019. On perusal of notes paper complainant side no representation from 09.03.2020. This case is pending from without progress. Case is in summons in nature. Today case is posted for process in order to serve summon to the accused. Hence this court has no other option except to dismiss the complaint for non payment of the process u/s 204 of crpc and non appearance of the complainant u/s 256(1) of CrPC. Accused is discharged.”



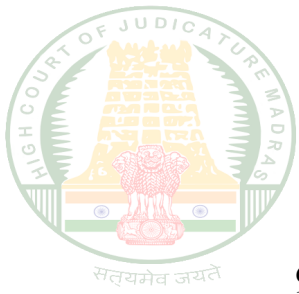
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6. The learned Magistrate, by specifically observing that there was no representation and the complainant was called absent and that the complainant has failed to pay the process for sending the summons to the accused, dismissed the complaint.

7. The learned counsel appearing for the petitioner would submit that the learned Magistrate ought to have given a fair opportunity to prosecute the case, that since the petitioner was in abroad, his wife being the power holder had been contesting the case and due to communication gap between the petitioner and his counsel, his wife could not attend the hearings, that the learned Magistrate failed to consider that the absence of the petitioner is not deliberate and not to protract the proceedings, that since the petitioner had shown *prima facie* case as against the respondent, the learned Magistrate ought not to have dismissed the complaint for default and that therefore the impugned order dismissing the complaint for non-prosecution is liable to be interfered with.

8. The learned counsel appearing for the petitioner would further submit that the petitioner may be given another opportunity to prosecute the case, as his absence is neither willful nor wanton.

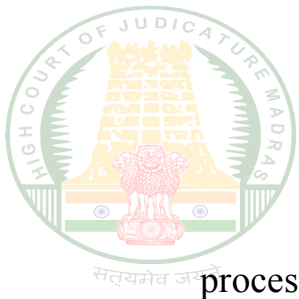


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9. It is evident from the records that the case was taken on file on 13.11.2019 and the learned Magistrate ordered for issuance of summons to the respondent and posted the case to 13.12.2019, that subsequently due to Covid-19 pandemic lock down, the case was being adjourned and that when the matter was taken up on 18.12.2021, the petitioner was called absent and then posted to 04.03.2022 and then to 19.03.2022 and on that day, recording the absence of the petitioner and as there was no representation for him, ordered fresh summons to the respondent and adjourned the matter to 10.06.2022. It is further evident that on 10.06.2022, there was no representation and as the petitioner was called absent, the learned Magistrate, by recording steps were not taken, adjourned to 26.08.2022 and even on that day, as the petitioner was called absent and as there was no representation and that since steps were not taken, adjourned to 30.09.2022 and on that day, the learned Magistrate, by recording the petitioner's absence and his failure to pay the process, dismissed the complaint and consequently discharged the respondent.

10. It is pertinent to note that though the case was taken on file on 13.12.2019, the petitioner has not shown any interest for paying the



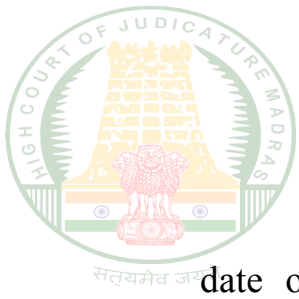
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process properly so as to enable the Court to send summons to the respondent and more importantly, before the dismissal, the petitioner had absented himself for more than four hearings and also there was no representation for him.

11. The learned counsel appearing for the petitioner would submit that since the petitioner is in abroad, he gave power to his wife and due to communication gap between the petitioner and his counsel, his wife could not appear before the concerned Court. But the petitioner has not shown that he filed an application before the concerned Court to recognize his wife as power agent and to permit her to prosecute the case on his behalf. In B-Diary extract, there is no reference that the petitioner's power agent has been recognized and permitted to prosecute the case on behalf of the petitioner.

12. It is pertinent to note that as per Section 143(2) of Negotiable Instruments Act, the trial for the offences under the said Act should be conducted on a day-to-day basis and as per Section 143(3) of Negotiable Instruments Act, the trial should be concluded within six months from the



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date of filing of the complaint. As rightly observed by the learned Magistrate, the proceedings under Section 138 of Negotiable Instruments Act is a summons case. In the case on hand, as already pointed out, the petitioner had protracted the proceedings for nearly three years even before the respondent entered into appearance.

13. As the petitioner failed prosecute the complaint under Section 138 of Negotiable Instruments Act, the Court's dismissal for non-prosecution cannot be found fault with. The petitioner's abandonment of the complaint, evident from the non-appearance and non-payment of process fee for summons to the accused, warrants the dismissal for non-prosecution, rendering the impugned order unassailable. Hence, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

14. In the result, the Criminal Revision Case stands dismissed. No costs.

07.03.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
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K.MURALI SHANKAR,J.

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To

1. The Judicial Magistrate No.I,
Kuzhithurai.

Pre-Delivery Order made in
Crl.R.C.(MD)No.1157 of 2024

Dated : 07.03.2025