



Crl.R.C.(MD)No.1307 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.03.2025

Delivered on : 28.03.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.1307 of 2023

P.Balamurugan : Petitioner

Vs.

SM.Valliammai : Respondent

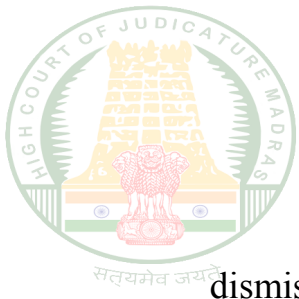
PRAYER : Criminal Revision Petition filed under Sections 397 r/w 401 of Cr.P.C., to call for the records relating to the impugned judgment passed under Section 256(1) of Cr.P.C., by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karaikudi in C.C.No.16 of 2023, dated 17.10.2023 and set aside the same as illegal.

For Petitioner : Mr.T.Veerakumar

For Respondent : No Appearance

ORDER

This Criminal Revision Petition is directed against the order passed in C.C.No.16 of 2023, dated 17.10.2023 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karaikudi,



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dismissing the petition filed under Section 138 of Negotiable Instruments Act, for non prosecution.

2. The case of the petitioner/complainant is that the respondent borrowed a sum of Rs.30 lakhs on 12.05.2021, agreeing to repay the same with interest at Rs.1/- per Rs.100/- per month and executed a promissory note therefor; that when the petitioner demanded the amount, the respondent has issued a cheque, dated 16.11.2022 drawn on Punjab National Bank, Karaikudi Branch, for Rs.20 lakhs; that when the cheque was presented for collection through his bankers, Indian Overseas Bank, Karaikudi Branch, the same was returned as payment was stopped; that the petitioner has then sent a legal notice, dated 02.12.2022 demanding the amount covered by the cheque and the same came to be returned as unclaimed and that since the respondent has not paid the amount within stipulated period, the petitioner was constrained to file a private complaint under Section 200 of Cr.P.C., against the respondent for the alleged offence under Section 138 of Negotiable Instruments Act.



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3. It is evident from the records that the respondent has entered into appearance and thereafter, trial was commenced on 11.07.2023 and on that day, the petitioner was examined as P.W.1 and five documents came to be exhibited as Ex.P.1 to Ex.P.5 and since there was no cross examination, the case was adjourned for proceeding under Section 313 of Cr.P.C; that when the case was pending for 313 Cr.P.C., questioning, the respondent has filed a petition under Section 311 of Cr.P.C., to recall the petitioner/complainant for cross examination and the said petition came to be allowed vide order, dated 11.09.2023; that the case was adjourned to 17.10.2023 for P.W.1 cross examination and when the matter was taken up on 17.10.2023, both the parties were called absent and that the learned Magistrate, by observing that though the counsel for the accused was ready to cross examine P.W.1, the complainant remained absent despite conditional order, dismissed the complaint for non prosecution under Section 256(1) of Cr.P.C.

4. Despite receipt of notice and printing of name in the cause list, the respondent has not turned up.



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5. The learned counsel for the petitioner would submit that the learned Magistrate, without properly appreciating the materials placed before him, dismissed the complaint; that though the petitioner's counsel has filed a petition under Section 256 (1) of Cr.P.C., for condoning his absence as he was not well, the learned Magistrate, without considering the same, has proceeded to dismiss the complaint; that the learned Magistrate failed to notice the fact that the respondent was also called absent on that day and application of the accused filed under Section 311 of Cr.P.C., came to be allowed and that the petitioner has not absented continuously and after allowing of the recall petition, the case was adjourned for one hearing and on that hearing itself, the complaint was ordered to be dismissed.

6. It is evident from the 'B' diary extract that the petitioner/complainant was examined in chief on 11.07.2023 and since the respondent side reported no cross examination, the learned Magistrate has adjourned the matter for proceeding under Section 313 of Cr.P.C and the same stage continued for three hearings and subsequently



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on 05.09.2023, the respondent filed a petition under Section 311 of Cr.P.C., and on the next hearing ie., 11.09.2023, the said re-call petition came to be allowed and the case was adjourned to 17.10.2023 for cross examination of P.W.1. It is necessary to refer the orders passed by the learned Magistrate for better appreciation ;

*“11.09.2023 : Both absent. Crmp allowed. For PW!
Cross call on 17.10.2023.*

17.10.2023 : Both absent. Today this case is posted for PW1 cross call on 17.10.2023. Though the counsel for accused is ready to cross examines PW1, the complainant (PW1) remained absent, despite conditional order for PW1 cross today. No plausible reason for absence of complainant. Since PW1 is absent, it is not possible for the accused to cross examine PW1. This attitude of the complainant that not obeying the court's order is highly condemnable. Hence, this compliant is dismissed u/s 256(1) Cr.P.C, for non prosecution.”

7.As already pointed out, the complainant has appeared before the concerned Court on 11.07.2023 and again on 26.07.2023, but the respondent/accused side has not chosen to cross examine the petitioner and that is why the case was adjourned for proceeding under Section 313 of Cr.P.C.



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8.It is nobody's case that the petitioner has been taking adjournments for subjecting himself to cross examination nor was absenting himself continuously for several hearings.

9.The learned counsel for the petitioner would rely on a decision of this Court in Crl.R.C.No.368 of 2011 [***Saritha Mittal Proprietrix, Ms./Visnu Ispat Udhyog, rep.by Power of Attorney Vs. K.Jayabal***], wherein, a learned Judge has observed ;

“11.Section 256 Cr.P.C. deals with death and absence of the complainant. Death of the complainant is not within our hands. But presence and absence are within our hands. Wifull absence cannot be sponsored. But mere absence with acceptable reasons can be countenanced. That is why, Section 256(1) Cr.P.C. on the one hand enables the Court to axe the complaint (Section 256(1) Cr.P.C.) and acquit the accused and on the other hand, it gives discretion to the Court in appropriate cases instead of axing the complainant to give an opportunity to the accused (See Proviso to Section 256(1) Cr.P.C.) This is for bonafide cases. Malafide cases will never be accommodated under Sec.256 Cr.P.C.

12. Cheque bouncing cases have become field for hide and seek. Both the complainant and the accused has the potentiality to do it, use the Court as their playground.



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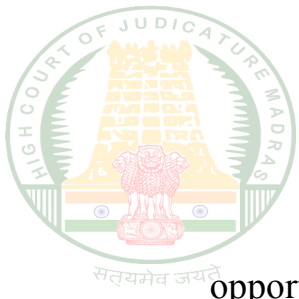
13. The accused will have the tendency to dodge the trial. Equally, complainant also will do it in order to fleece/extract money to the extent possible from the accused. The Complainant will see that the accused should suffer in Court and under such a situation extract money from the accused. These are unavoidable casualties in the Magistrate Courts. In the midst of these casualties the Court shall do justice to both. Be as it may.

14. Now, we shall revert back to our case.

15. A close scanning of case records would reveal that there is no material to sustain the premises of the learned Magistrate that a final notice has been served upon the complainant. That apart, in the facts and circumstances of the case, the learned Magistrate could have given an opportunity to the complainant.”

10. Even in the case on hand, there is no material to infer that the learned Magistrate has sent an official notice to the complainant to appear and subject himself for cross examination.

11. Considering the facts and circumstances of the case, this Court is of the view that the learned Magistrate, without giving proper



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opportunity, has hurriedly dismissed the complaint for non prosecution and as such, the impugned order dismissing the complaint under Section 256(1) Cr.P.C., cannot be sustained. Consequently, this Court concludes that the impugned order is liable to be set aside.

12.In the result, this Criminal Revision Case is allowed and the impugned order, dated 17.10.2023 in C.C.No.16 of 2023 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karaikudi is set aside and the learned Judicial Magistrate is directed to restore the case in C.C.No.16 of 2023 to his file and proceed with the trial of the case and dispose of the same as expeditiously as possible.

28.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Judicial Magistrate, Fast Track Court
at Magisterial Level, Karaikudi .

2.The Inspector of Police,
Vilampatti Police Station,
Dindigul District.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
Crl.R.C.(MD)No.1307 of 2023

Dated: 28.03.2025