

**IN THE COURT OF LXIII ADDL., CITY CIVIL &
SESSIONS JUDGE, BANGALORE CITY.**

(CCH-64)

DATED THIS THE 23RD DAY OF FEBRUARY 2017.

PRESENT

SRI.JOSHI VENKATESH, B.A.LL.B,(Spl),
LXIII Addl., City Civil & Sessions Judge,
Bangalore.

Crl.Rev.Pet.No.464/2016

**PETITIONER/
COMPLAINANT** : Discover Designs,
Represented by its partner
Dineshkumar,
S/o K.M.Arjunlal,
Aged about 36 years,
R/at No.404, 11th Cross, 1st 'N' Block,
Dr. Rajkumar Road Cross,
Near Corporation Bank,
Bangalore – 10.

(By Sri. Patil.R.S., Adv.,)

/Vs/

**RESPONDENT/
ACCUSED** : Smt. Sujatha, W/o Manjunath,
Major,
R/at No.235, Nisarga, 9th Cross,
1st 'N' Block, Rajajinagar,
Bangalore – 10.

ORDER

1. Revision petitioner/complainant filed this revision petition U/Sec.397 of Cr.P.C., praying this Court to set-aside the order dated 12.05.2016 passed in C.C.No.17232/2009 by 21st A.C.M.M., Bangalore, and restore the same in the interest of justice and equity.
2. Parties to the revision petition are referred as per the ranks in the lower court. Revision petitioner is the complainant before the trial court. Respondent is the accused before the trial court.
3. In the revision petition it is stated by the revision petitioner that, he filed complaint against the accused/respondent before the Trial Court for the offence punishable U/Sec.138 of N.I. Act. Accused appeared before the Court and released on bail. Plea of the accused recorded. When the matter was posted for cross examination of the petitioner, accused not appeared before the Court. Accordingly it is taken as no cross examination of PW.1 by accused and posted the matter for 313 statement of accused. Accused fails

to appear before the court. Accordingly NBW was issued against the accused. On 15.04.2016 petitioner taken fresh steps against the accused to the permanent address through the Police Commissioner, Bangalore, and matter is posted on 12.05.2016. Due to some inconvenience petitioner and his counsel failed to appear before the Trial Court on the said date. Hence complaint is dismissed for non-prosecution. Accordingly the present revision is filed on the following grounds.

Order of the Magistrate is improper and unsustainable in law. Complainant/petitioner appeared before the Court regularly without fail. When the matter is set down for 313 statement of the accused, appearance of petitioner/complainant before the court is not necessary. Magistrate ought to have seen that the petitioner has taken steps through Police Commissioner, but it is not returned. On 12.05.2016 non-appearance of the complainant before the court is not intentional one. If petition is not allowed

complainant will be put to hardship. Trial Court could have given one more chance to the complainant. Accordingly prayed to allow the revision petition.

4. After registration the revision petition the same is made over to this Court for disposal in accordance with law. This Court issued notice to the respondent/accused. Even though notice is served on the respondent, respondent remained absent before the Court. This Court feels that Trial Court records are not necessary for disposal of this revision. Accordingly Trial Court records not called for. Revision petitioner filed certified copy of the entire order sheet of C.C.No.17232/2009 before the Court.
5. Heard the arguments of advocate for the revision petitioner. Perused the records before the Court.
6. The points that arise for my consideration are:
 - Point No.1 : Whether order of the trial court is not in accordance with law and interference of this Court is necessary ?
 - Point No.2.: What Order?

7. My answer to the above points is as under:

Point No.1: In the **AFFIRMATIVE**,

Point No.2: As per final order for the following,

REASONS

8. **Point No.1:** After hearing the arguments of revision petitioner and on perusal of the records before the Court, it is clear that revision petitioner/complainant filed complaint against the respondent/accused for the offence punishable U/Sec.138 of the N.I. Act. Accused appeared before the Court and released on bail. Complainant led his evidence and closed his side. From the order sheet of the Trial Court it is noticed that, accused failed to appear before the Trial Court. Accordingly NBW was issued. It is also clear from the order sheet of the Trial Court that, NBW was issued against the accused and case was posted for 313 statement of the accused on 12.05.2016 Trial Court found that complainant and his counsel absent on 12.05.2016 before the court. Accordingly dismissed the complaint for non-prosecution. On the day when complaint was

dismissed for non-prosecution matter was set down for returning NBW of the accused. Hence the presence of complainant is not at all necessary on the date of dismissal of the complaint before the Court. Trial Court could have given one more chance to the complainant to take steps. Hence, I feel order passed by the Trial Court dismissing the complaint for non-prosecution is not in accordance with law. If complaint is not restored to its original stage the revision petitioner will be put to hardship. Accordingly, **Point No.1 is answered in the Affirmative.**

9. **Point No.2:** In view of the above discussion and the findings on point No.1, I proceed to pass following:

ORDER

1. The revision petition filed by the revision petitioner/complainant against the order dated 12.05.2016 passed by 21st A.C.M.M., Bangalore, in C.C.No.17232/2009 is allowed.

2. Order passed by 21st A.C.M.M., Bangalore in C.C.No.17232/2009 dated 12.05.2016 is hereby set-aside.
3. Complaint is restored to its original stage.
4. Revision petitioner/complainant is directed to appear before the trial court on 10.04.2017 without anticipation of any fresh notice from the trial court for his appearance before the Court.
5. Trial court is directed to restore the complaint to its original stage and allow the complainant to take steps for further proceedings. If complainant or his counsel fails to appear before the Court on 10.04.2017 then the trial court is at liberty to pass appropriate order in accordance with law.
6. Office is directed to return the trial court records if any along with the copy of this order for information and necessary action as early as possible.

(Dictated to the Stenographer, the transcript revised by me and then pronounced in the open court on this the **23rd day of February 2017**).

**(JOSHI VENKATESH),
LXIII Addl., City Civil &
Sessions Judge, Bangalore.**

