

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.02.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal Nos.560 and 567 of 2014

I.S.Ashok Kumar

...Appellant/Complainant

v.

B.C.Raman

...Respondent/Accused in CrI.A.No.560/2014

B.R.Manoharan

...Respondent/Accused in CrI.A.No.567/2014

Prayer:Criminal appeals filed under Section 378 Cr.P.C., against the judgment of acquittal dated 27.08.2014 in S.T.C.Nos.70 and 77 of 2013 on the file of the Judicial Magistrate's Court, Fast Track Court, Dharmapuri.

For Appellant : Mr.C.Prabakaran

For Respondent : Mr.P.Thilagan

C O M M O N J U D G M E N T

The Criminal appeals arise out of the judgment of acquittal dated 27.08.2014 in S.T.C.Nos.70 and 77 of 2013 on the file of the Judicial Magistrate's Court, Fast Track Court, Dharmapuri, acquitting the respondents/accused for non appearance of the appellant/complainant under Section 256 Cr.P.C.

2.The appellant as a complainant preferred private complaints against the respondents/accused under Section 138 of the Negotiable Instruments Act stating that the respondents/accused borrowed a sum of Rs.5,00,000/- and Rs.3,00,000/- respectively and to discharge the same, they issued cheques. When the cheques were presented before the Bank for encashment, they were returned as 'insufficient funds' on 30.03.2013. Therefore, the appellant sent statutory notice to the

accused and the same were returned as 'door locked'. Therefore, the appellant has preferred private complaints.

3.The trial Court has taken cognizance of an offence, after following the procedure and recording sworn statement. The trial Court dismissed the complaints due to non-appearance of the appellant/complainant by invoking Section 256 Cr.P.C. and acquitted the respondents/accused from the charges levelled against them, aggrieved over the same, the appellant/complainant preferred the appeals.

4.Heard both sides.

5.On perusal of the order passed by the trial Court, it reveals that after 13 chances had been given by the Court and more over several last chances also given, the complainant failed to appear before the Court. Hence, the trial Court in the interest of justice under Section 256(1) Cr.P.C. dismissed the complaint for non appearance of the complainant.

6.At this juncture, it is appropriate to extract Section 256 Cr.P.C., which reads as follows:

"256. Non-appearance or death of complainant.

(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death. "

As per the above extract, if the presence of the complainant is necessary, the trial Court has discretion to dismiss the complaint if

the complainant did not appear before the Court. It is to be noted that the trial Court has given an opportunity to the complainant to put forth his case. Since the appellant/complainant did not appear before the trial Court, the trial Court by invoking Section 256 Cr.P.C. dismissed the complaints and acquitted the respondents/accused.

7.Considering the facts and circumstances of the case along with the order passed by the trial Court, I am of the opinion, the trial Court has correctly acquitted the respondents/accused by invoking Section 256 Cr.P.C. So the order of acquittal passed by the trial Court does not suffer any infirmity or illegality and therefore, it is hereby confirmed. The Criminal Appeals deserve to be dismissed and accordingly, they are dismissed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate's Court,
Fast Track Court, Dharmapuri.

2.-Do- Through The Chief Judicial Magistrate,
Dharmapuri.

3.The Public Prosecutor
High Court, Madras.

4.The Record keeper
High Court, Madras.

2 CCs to Mr.C.Prabakaran, Advocate SR.No. 9298 & 9297

CrI.A.Nos.560 and 567 of 2014

RSY (CO)
PSI (13.03.2015)