

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18-12-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.629 of 2015

Bhuvaneswari

... Appellant

Vs.

Abinaya Silks & Fashion
Rep. by C. Sekar
32-B, Chittaverapachetti Street
Dharmapuri Taluk & District.

.... Respondent

Criminal Appeal filed under Section 378 of Cr.P.C., against the order of acquittal dated 04-08-2015 made in S.T.C.No.122 of 2014 on the file of the Judicial Magistrate, Fast Track (Magistrate Level), Dharmapuri.

For appellant :: Mr. N. Anand Venkatesh

For respondent :: Mr. P. M. Jayachandran

JUDGMENT

This criminal appeal has been directed against the dismissal order dated 04-08-2015 passed in S.T.C.No.122 of 2014 by the Judicial Magistrate, Fast Track, Dharmapuri.

2. The appellant herein as complainant has filed the complaint in question under Section 138 of the Negotiable Instruments Act, 1881 and the same has been taken on file in S.T.C.No.122 of 2014 wherein the present respondent has been shown as sole accused. Since on 04-08-2015, the complainant has failed to make his appearance, S.T.C.No.122 of 2014 has been dismissed under Section 256(1) of Cr.P.C. Against the order of dismissal, the present criminal appeal has been preferred at the instance of the complainant as appellant.

3. The learned counsel appearing for the appellant/complainant has contended that only on 04-08-2015, the complainant has failed to make his appearance. But the Court-below has dismissed S.T.C.No.122 of 2014 and therefore, the dismissal order passed by the Court-below is liable to be set aside.

4. Per contra, the learned counsel appearing for the respondent has contended that even in the dismissal order, it is observed that in all the hearings the complainant has not made his appearance and therefore, the dismissal order passed by the Court-below is perfectly correct and the same need not be set aside.

5. On the basis of the divergent submissions made on either side, this Court has perused the entire proceedings made by the Trial Court in S.T.C.No.122 of 2014. In all the hearings except on 04-08-2015, the complainant has made his appearance and in most of the hearings only on the request made on the side of the accused, S.T.C.No.122 of 2014 has been adjourned. Under the said circumstances, the dismissal order dated 04-08-2015 passed in S.T.C.No.122 of 2014 is liable to be set aside.

In fine, this criminal appeal is allowed. The dismissal order dated 04-08-2015 passed in S.T.C.No.122 of 2014 by the Trial Court is set aside and S.T.C.No.122 of 2014 is ordered to be restored to file. The Trial Court is directed to dispose of S.T.C.No.122 of 2014 as early as possible, without giving unnecessary adjournment.

sd/-
Assistant Registrar(Cs-III)

/TRUE COPY/

Sub-Assistant Registrar

glp

To,

1.The Judicial Magistrate,
Fast Track Court(Magistrate Level),
Dharmapuri.

2.Do-thro' The Chief Judicial Magistrate
Dharmapuri

+1 CC to MR.S.Dhanasekaran Advocate. SR.NO. 68261
+1 CC to MR.P.M. Jayachandran Advocate. SR.NO.68324

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CO-EV
JD 08/01/2016