



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 09.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.DEVADASS

CRL.A.No.95 of 2015

Govindammal

... Appellant/Complainant

Vs.

K.Vinoth

... Respondent/Accused

PRAYER: This Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure against the order passed in C.C.No.514 of 2013 dated 23.09.2014 on the file of the Fast Track Court at Magistrate Level-2, Egmore, Chennai-600 008.

For Appellant : M/s.S.Ambigapathi
For Respondent : Mr.R.Karunakaran

J U D G M E N T

This appeal has been preferred by the complainant as against the acquittal of the accused/respondent.

2.This matter arises out of a cheque bouncing case.

3.The learned Magistrate perusing the sworn statement of the complainant and other witnesses and documents and prima facie case taken on file and issued process under Section 204 of Cr.P.C. to the accused. The complainant should be diligent in prosecuting his complaint and Section 256 of Cr.P.C. has been incorporated in the Code of Criminal Procedure empowering the learned Magistrate to dispose the complaint, if the complainant was absent.

4.Now in this case, invoking the said provision, the learned Fast Track Court Magistrate, on 23.09.2014, simply dismissing the complaint. But it is also a method of disposal. In such disposals, the accused will be jubilant. However, the complainant will be most unhappy. This is the reality of the situation.

5.If we read Section 256 Cr.P.C. carefully, it is not that the moment of the complainant was absent, straight away the learned Magistrate cannot throw away the complaint lock, stock and barrel. Discretion has been given to the learned Magistrate under Section 256 Cr.P.C.



6. In a cheque bouncing case, the complainant will be very much interested. It will be more if they are financiers. The Court has to consider the conduct of the persons if the complainant was absent on the hearing date. It is not that except dismissing the complaint, the learned Magistrate has no other go as he can adjourn the case to give an opportunity to the complainant to appear. He can issue summons to the complainant and he can issue notice to the complainant. But the complainant does not deserve any consideration.

7. But in this case, it is stated that Rs.10,00,000/- is involved. Money makes many things. The man who is disinterested in money is a rarity today. This is very much present in the cheque bouncing cases. But at the same time, the accused will be very much interested in escaping from cheque bouncing cases.

8. In the circumstances, the Court has to consider exercise of his judicial discretion. There may be court birds. The complainant cannot be encouraged. Those kind of cases should be thrown away under Section 256 Cr.P.C. Now in this case, the appellant is not a regular financier. He is an individual person.

9. In this case, on 09.07.2014, an order was passed with instructions to post the case on 23.09.2014. On that day, the accused was present, however, the complainant was not present. In these circumstances, the complaint was dismissed under Section 256(1) Cr.P.C.

10. Now considering the submissions of both sides and considering the circumstances leading to the dismissal of the complaint, learned Magistrate could have given an opportunity to adopt some acceptable method. Thereafter, the complaint could have been dismissed. In these circumstances, it appears that no fair opportunity has been given to the complainant. In these circumstances, the Criminal Appeal is allowed and the order of acquittal passed by the Fast Track Court Magistrate Level II, Egmore, on 23.09.2014 is set aside. Learned Magistrate will restore the complaint on file. The complainant shall appear before the learned Magistrate on 20.05.2015 without fail. Both side counsel shall also present.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar



To

1. The Chief Judicial Magistrate,
Chennai.

2. The Fast Track Court at Magistrate Level-2,
Egmore, Chennai-600 008.

+1 cc to Mr.S.Ambigapathi, Advocate,SR.19639

+1 cc to Mr.R.Karunakaran, Advocate,SR.20327.

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