

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.201 of 2008

N.Balasubramanian

... Appellant/Complainant

R.Muthusamy

vs.

... Respondent/Accused

Criminal Appeal filed under Section 378 of Cr.P.C., against the judgment made in C.C.No.566 of 2004 dated 7.12.2007 on the file of the Judicial Magistrate No.2, Erode.

For appellant : Mr.V.S.Kesavan

For Respondent : No appearance

JUDGMENT

This Criminal Appeal has been directed against the dismissal order dated 7.12.2007 passed in Calendar Case No.566 of 2004 by the Judicial Magistrate No.2, Erode.

2. The appellant herein, as complainant, has filed a complaint under section 138 of Negotiable Instruments Act, 1881 on the file of the trial court and the same has been taken on file in Calendar Case No.566 of 2004, wherein the present respondent has been shown as sole accused. Since on 7.12.2007 the complainant has failed to make his appearance before the trial court, the complaint in question has been dismissed. Against the dismissal order, present Criminal Appeal has been preferred at the instance of the complainant as appellant.

3. Even though the respondent has been served with summons, appearance has not been made. Under such circumstances, this Criminal Appeal is disposed of on merits on the basis of the contentions put forth on the side of the appellant/complainant.

4. Learned counsel appearing for the appellant/complainant has contended that only due to non-appearance of the complainant, C.C.No.566 of 2004 has been dismissed on 7.12.2007 and that sufficient opportunity may be given to the appellant/complainant.

5. Considering the fact that the complaint filed in C.C.No.566 of 2004 has been dismissed only for default on 7.12.2007 and also considering the fact sufficient opportunity must be given to the appellant/complaint, this Court is of the view to set aside the dismissal order dated 7.12.2007 passed in Calendar Case No.566 of 2004. Therefore, the present Criminal Appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The dismissal order dated 7.12.2007 passed in C.C.No.566 of 2004 by the trial court is set aside. C.C.No.566 of 2004 is ordered to be restored to file. The trial court is directed to dispose of the same, on merits, after getting appropriate evidence.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To :

- 1.The Judicial Magistrate No.2,
Erode.
- 2.-Do- Thro The chief Judicial Magistrate,
Erode.
3. The Public Prosecutor,
High Court, Chennai

+1cc to Mr.V.Kesavan, Advocate, S.R.No.68242

Crl.A.No.201 of 2008

rsy(CO)
srg(07/01/2016)

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