

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.286 of 2008

C.Selvam

... Appellant/Complainant

Vs.

S.Jayaganesh

... Respondent/Accused

Criminal Appeal filed under Section 378 of Cr.P.C., against the order dated 26.02.2008, passed by the Judicial Magistrate No.III, Coimbatore, in C.C.No.1080 of 2006.

For appellant : Mr.B.Vijayakumar

For Respondent : No appearance

JUDGMENT

This criminal appeal has been directed against the dismissal order, dated 26.2.2008, passed in Calendar Case No.1080 of 2006, by the Judicial Magistrate, No.III, Coimbatore.

2. The appellant herein, as complainant, has filed a complaint under section 138 of the Negotiable Instruments Act, 1881, on the file of the trial Court and the same has been taken on file in Calendar Case No.1080 of 2006, wherein, the present respondent has been shown as sole accused. In the trial Court, the appellant/complainant has failed to make his appearance, on 26.2.2008 and due to that, Calendar Case No.1080 of 2006 has been dismissed for default. Against the dismissal order, the present criminal appeal has been filed at the instance of the complainant, as appellant.

3. Even though, the respondent has been served with summons, appearance has not been made. Under the said circumstances, the present 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 due to unforeseen circumstances, the appellant/complainant has not been able to make his appearance on 26.2.2008. But unfortunately, the trial Court has dismissed the Calendar Case No.1080 of 2006. Under the said circumstances, the dismissal order passed by the trial Court is liable to be set aside.

5. Considering the fact that for the first time Calendar Case No.1080 of 2006 has been dismissed for default on 26.2.2008 and also considering that sufficient opportunity must be given to the appellant/complainant, this Court is of the view to set aside the dismissal order, dated 26.2.2008, passed in Calendar Case No.1080 of 2006 and therefore, the present Criminal Appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The dismissal order, dated 26.2.2008, passed in Calendar Case No.1080 of 2006, by the trial court is set aside. Calendar Case No.1080 of 2006 is ordered to be restored to file. The trial court is directed to dispose of the same, on merits and after getting proper evidence.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

msk
To

Sub Assistant Registrar

1.The Judicial Magistrate No.III,
Coimbatore.

2.-do- Through The Chief Judicial Magistrate,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

4.The Section Officer,
Criminal Section,
High Court, Madras 104.

Crl.A.No.286 of 2008

MSM(CO)CA(06/01/2016)