

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

Cr1.A.Nos.146 and 157 of 2012

M.K.Sridharan

.. Appellant/Complainant in both  
the appeals

Vs.

1.Vijayamahalingam Cr1.A.146/12

S.Vijayakumar Cr1.A.157/12

.. Respondent/Accused in both  
the appeals

Prayer: Criminal Appeals filed under Section 378 of Cr.P.C., against the judgment of acquittal dated 14.12.2011 made in C.C.Nos.254 and 255 of 2011 on the file of the learned Judicial Magistrate, Fast Track Court at Magistrate Level-II, Coimbatore.

For Appellant : Mr.I.Abrar Md Abdullah  
For Respondent : No appearance

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 14.12.2011 made in C.C.Nos.254 and 255 of 2011 on the file of the learned Judicial Magistrate, Fast Track Court at Magistrate Level-II, Coimbatore.

2.The appellant herein as a complainant preferred private complaints stating that the respondent/accused had borrowed a sum of Rs.1,85,000/- and Rs.80,000/- and to discharge the same, he issued Ex.P1 cheques. When the appellant has presented the cheques for encashment, they were returned as "insufficient funds" vide Ex.P2 return memo. Therefore, the appellant has issued Ex.P3 statutory notice to the respondent under Section 138(b) of the Negotiable Instruments Act (hereinafter called as "the Act"). But the notice were returned as "not claimed". Since the respondent neither sent any reply nor repaid the amount, the appellant has preferred private complaints under Section 138 of the Act and the same were taken on file as C.C.Nos.254 and 255 of 2011 by the learned Judicial Magistrate No.VI, Coimbatore. Then the case has been transferred to Fast Track Court No.II, Coimbatore.

3.On perusal of "B" diary, it reveals that the appellant/complainant appeared before the learned Judicial Magistrate No.VI, Coimbatore upto 14.10.2011 and thereafter, the appellant was directed to be appeared before the Fast Track Court No.II, Coimbatore.

4.On reading of impugned order shows that the complainant has to be appeared before the Fast Track Court No.II, Coimbatore as per the direction given on 14.10.2011. But when the case was taken up for hearing before the Fast Track Court No.II, Coimbatore, there was no representation on behalf of the appellant/complainant on 01.12.2011 and 14.12.2011. Therefore, the trial Court by invoking Section 256 Cr.P.C. dismissed the complaints filed by the complainant.

5.Learned counsel for the appellant has drawn attention of this Court through the "B Diary" stating that from the day one, when the case was taken on file, the appellant appeared regularly before the learned Judicial Magistrate No.VI, Coimbatore. He was absent only for two hearings that too after the case has been transferred to the Fast Track Court No.II, Coimbatore. Hence, an opportunity must be given to the complainant.

6.Even though respondent was served with notice and counsel name has been printed in the cause list, no one represented on behalf of the respondent. Hence, the matter was posted today under the caption 'for orders'. Even today, there is no representation on behalf of the respondent.

7.Heard the learned counsel for the appellant and perused the materials available on record.

8.It is seen from the records that the complaint was filed on 25.02.2010 and the first hearing was posted on 09.04.2010. Except 08.10.2010 and 04.01.2011, the appellant/complainant has appeared before the Court regularly. It is true, on 14.10.2011, the appellant was present and he was directed to be appeared before the Fast Track Court No.II, Coimbatore on 01.12.2011, but he did not appear. Again when the matter was taken up for hearing on 14.12.2011, the appellant did not appear and hence, the trial Court by invoking Section 256 Cr.P.C. dismissed the complaints.

9.Now it is appropriate to consider the following decisions relied upon by the learned counsel for the appellant/complainant:

(i) In (1998) 1 SCC 687 (Associated Cement Co. Ltd. Keshvanand), wherein it was held that if the presence of the complainant on that day was quite unnecessary then resorting to the steps to dismiss the application is unwarranted. Para-17 is extracted hereunder:

"17. .. .. If the situation does not justify the case being adjourned the Court is free to dismiss the

complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice."

(ii) In 2002 (7) SCC 726 (Mohd.Azeem v. A.Venkatesh and another), wherein it was held that one singular default in appearance on the part of complainant is not a reason for dismissing the complaint.

10.Considering the facts and circumstances of the case along with the above decisions, the "B" diary shows that except two hearings (i.e.) on 01.12.2011 and 14.12.2011, the complainant appeared before the trial Court on all the hearing dates more than 10 times. In such circumstances, a fair opportunity must be given to the appellant/ complainant. So the impugned orders dated 14.12.2011 passed by the trial Court dismissing the complaint filed by the complainant by invoking Section 256 Cr.P.C. are hereby set aside and the criminal appeals are allowed.

11.In fine,

- The Criminal Appeals are allowed by setting aside the judgment of acquittal dated 14.12.2011 made in C.C.Nos.254 and 255 of 2011 on the file of the learned Judicial Magistrate, Fast Track Court at Magistrate Level-II, Coimbatore and the complaint is restored to file.
- Since the case is of the year 2010, the trial Court is directed to dispose of the case in accordance with law within a period of six months from the date of receipt of a copy of this order after giving fair opportunity to both the parties.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

- 1.The Judicial Magistrate  
Fast Track Court at Magistrate Level-II, Coimbatore.
- 2.The Public Prosecutor, High Court, Chennai.

3.The Record Keeper, Criminal Section,  
High Court, Chennai.

+2 cc's to Mr.I.Abrar Md Abdullah, Advocate,SR.14686, 14687.

ctk(co)  
krd 30/3

Crl.A.Nos.146 and 157 of 2012



WEB COPY