

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.12.2016

Coram

The Hon'ble Mr.Justice M.Venugopal

Crl.A.No.796 of 2016

Rathinammal

...Appellant

Vs.

Manickam

... Respondent

Criminal Appeal, filed under Section 378 of Criminal Procedure Code to set aside the order of dismissal, dated 22.08.2016, passed in S.T.C.No.14 of 2007, on the file of the Judicial Magistrate No.II, Mettur, Salem.

For Appellant : Mr.B.Ravi

For Respondent : Mr.V.Sungendran

JUDGEMENT

The Appellant/Complainant has preferred the instant Criminal Appeal as against the judgment, dated 22.08.2016, passed in S.T.C.No.14 of 2007, on the file of the Judicial Magistrate No.II, Mettur, Salem/trial Court.

2. Heard both sides.

3. The Complaint in S.T.C.No.14 of 2007, on the file of the trial Court, came to be dismissed on 22.08.2016, for the reason that, in spite of service of final notice, the Complainant was absent, and there was no representation on her behalf.

4. According to the Learned Counsel for the Appellant/Complainant, since the main case was posted for arguments, an opportunity might have been provided to the Appellant/Complainant to substantiate her version of the case.

5. Repelling the submission of the Learned Counsel for the Appellant/Complainant, the learned counsel for the Respondent/Accused vehemently contends that, when the Appellant/Complainant had filed a Complaint before the trial Court, in S.T.C.No.14 of 2007, on 08.01.2007, and when the matter was posted for hearing the arguments in the main case on 22.08.2016, she should have been present, (unless, her personal appearance/presence was dispensed with by the trial Court), and since she

was not quite diligent enough to conduct the case, and also on her behalf, there was no representation through any Learned counsel, the trial Court passed a final Order of Dismissal of the Complaint on 22.08.2016, in S.T.C.No.14 of 2007, which is free from any flaw.

6. It is to be noted that the Appellant/Complainant filed a Complaint in S.T.C.No.14 of 2007, on the file of the trial Court on 08.01.2007 (for an offence under Sections 138 and 142 of Negotiable Instruments Act, 1881) and was disposed on 22.08.2016.

7. Ordinarily, the presence of either the Complainant, or the Respondent/Accused may not be insisted upon by a 'Court of Law', unless, their presence is indispensable in connection with the conduct/adjudication of the main case, with which, he/she is associated. No wonder, a 'Court of Law', cannot, for the sake of mere pleasure, can require the respective parties to appear before it. When the respective parties appear before the trial Court in a given case, it must serve a purpose. There is no use in requiring the respective parties to appear on each and every hearing of the case. In this regard, the trial Court can exercise its sound judicial discretion,

and shall act as it deems fit and proper, based on the facts and circumstances of a given case, which float on the surface. However, no blanket order can be passed by a 'Court of Law', exempting the personal appearance of either the Complainant, or the Accused.

8. It is to be borne in mind that, a 'Court of Law' has to exercise its discretion, as per Section 256 of the Criminal Procedure Code (in short, Cr.P.C.) with great care, caution, and circumspection. Even the presence or absence of an Advocate may be taken into consideration by the trial Court, when it is to determine whether to adjourn the main case or not. In short, the discretion cannot be exercised generously, impairing the cause of administration of justice. When personal appearance of the Complainant is not necessary on a particular day, the trial Court has to exercise its plenitude of its power to dispense with the personal appearance of the Complainant, or even the Accused, as the case may be. If, for further progress of the case, the presence of either the Complainant or Accused is just and necessary, the trial Court can exercise its discretion to pass an order, directing the parties to appear before it. The trial Court, as a short cut method, or by adopting a wooden approach, cannot resort to dismissal of the Complaint for the sake

of statistical disposal.

9. In this connection, it is not out of place for this Court to make a pertinent mention that the Code of Criminal Procedure does not provide for dismissal of the 'Complaint', or 'Discharge' of an Accused, when the Appellant/Complainant remain absent. Just because of the Complainant being not present, it is not necessary in all cases that the Accused shall be acquitted for the absence of parties either on a single day or for two or three occasions, especially, (in a case under section 138 of N.I.Act) and the Complaint should not be dismissed in the interest of delivering substantial justice. Undoubtedly, an obligation is cast upon the Complainant to be present on the date of hearing, even if the accused had not appeared. In a given case where the complainant was not present at the time of hearing before the trial Court, it may exhibit his *laissez-faire* or lackadaisical attitude.

10. Apart from the above, as far as the present case is concerned, this Court is constrained to point out that, on 13.05.2016, both the Appellant/Complainant and the Respondent/Accused were absent. In fact,

a Petition under Section 317 Cr.P.C. was filed and the same was allowed. On the side of the Complainant, the trial Court had recorded in its paper (adjudication proceedings) on 13.05.2016, that, "no rep. on the Complainant side, and because of that, a final notice was directed to be issued to the Complainant, and the matter was directed to be called on 23.05.2016'. It transpires that on 23.05.2016, the Appellant/Complainant and the Respondent/Accused were absent. On their respective sides, Petitions under Sections 256 and 317 Cr.P.C. were filed and were allowed by the trial Court, and the case stood adjourned to 01.06.2016.

11. It comes to be known that, once again on 01.06.2016, the Appellant/Complainant and the Respondent/Accused remained absent and a Petition under Section 317 was filed before the trial Court and the same was allowed. The trial Court, in the 'Notes paper', (confidential proceedings) had mentioned that, CrI.O.P.No.14870 of 2014 is pending, and hence, directed the main case to be called on 01.08.2016, and on 01.08.2016, the Appellant/Complainant was absent, and there was no representation on her side, however, the Respondent/Accused was present. Therefore, the trial Court had directed the issuance of final notice to the Appellant/Complainant

and the case was directed to be called on 22.08.2016. On 22.08.2016, the trial Court had observed that, in spite of service of final notice, the Complainant was absent, no representation. Hence, the complaint was dismissed.

12. From the aforestated relevant details, it is crystalline clear that both the Appellant/Complainant and the Respondent/Accused every now and then, (according to their whims & fancies) had not appeared for the hearing date in a musical chair fashion, and obviously, caused much inconvenience and hardship to the trial Court. This Court, undoubtedly, unerringly points out that the respective parties do not evince interest to terminate the proceedings in S.T.C.No.17 of 2007, to its logical end.

13. Be that as it may, on a careful consideration of respective contentions, and also this Court, by looking into the entire conspectus of the attendant facts and circumstances of the instant case, in an encircling fashion, comes to an inevitable conclusion that both the parties are not strictly entitled to seek the arms of this Court to extend its judicial generosity. However, this Court, by keeping in mind of a primordial fact

that the main case in S.T.C.No.14 of 2007, is only set for hearing of final arguments, to draw a curtain of the main case to reach its logical conclusion, to prevent an aberration of justice and to promote substantial cause of justice, interferes with the impugned Order of Dismissal of the Complaint in S.T.C.No.14 of 2007 and sets aside the same. Consequently, the Criminal Appeal succeeds.

14. In fine, the Criminal Appeal is allowed. The Impugned Judgment, dated 22.08.2016 in S.T.C.No.14 of 2007, on the file of the Learned Judicial Magistrate No.II, Mettur, is set aside by this Court for the reasons assigned in this Appeal. The Learned Judicial Magistrate, Mettur, is directed to restore the Complaint in S.T.C.No.14 of 2007, to his file, within a period of one week from the date of receipt of a copy of this Judgment. After restoring the case in S.T.C.No.14 of 2007 to file, the Learned Judicial Magistrate, Mettur, is directed to dispose of the said case in accordance with law within a period of forty five days, and to report before this Court without fail.

15. It cannot be gain said that the respective parties are directed to

lend their assistance, and unstinted cooperation to the trial Court in disposing of the main case within the time adumbrated by this Court, as stated supra. Before the trial Court, both the parties are directed to appear without absenting themselves and file a Petition (s) either under Section 256 or 317 Cr.P.C. and the trial Court is directed to send a compliance report after disposing the main case in S.T.C.No.14 of 2007, before this Court without fail.

01.12.2016

Index : Yes/
Internet :Yes/

sd/ avr

To

1. The Judicial Magistrate No.II,
Mettur, Salem.
2. The Registrar (Judicial)
High Court, Madras.
(For favour of information and
necessary follow up action).

M.Venugopal, J.,

sd/ avr

Crl.A.No.796 of 2016

01.12.2016