

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19-01-2016

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.540 of 2015

Mr. V. Sridhar

... Appellant

Vs.

Mr. P. Raviraj

... Respondent

Criminal Appeal under Section 378, Cr.P.C., against the judgment passed by Fast Track Court at Magisterial Level-2, Egmore, Chennai - 8, in C.C.No.5 of 2015 dated 17-06-2015 for an offence under Section 138 of Negotiable Instruments Act, 1881.

For Appellants :: Mr. A.D. Jagadish Chandira

For Respondent :: Mr. V.K. Rajagopalan

JUDGMENT

The order of dismissal dated 17-06-2015 passed in C.C.No.5 of 2015 by the Fast Track Court Magisterial Level II, Egmore, Chennai is being challenged in the present Criminal Appeal.

2. The appellant herein as complainant has filed the complaint in question 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 C.C.No.5 of 2015 wherein the present respondent has been shown as sole accused.

3. The Trial Court has dismissed the complaint on 17-06-2015 since the complainant has failed to make his appearance. Against the order of dismissal, the present criminal appeal has been preferred at the instance of the complainant as appellant.

4. The learned counsel appearing for the appellant/complainant has contended that due to unforeseen circumstances, the complainant has not been able to appear before the Court on 17-06-2015 and the Trial Court has dismissed the complaint under Section 256(1), Cr.P.C. Under the said circumstances, the dismissal order passed by the Trial Court is liable to be set aside.

5. Per contra, the learned counsel appearing for the respondent /accused has also contended to the effect that the respondent/accused has not personally received the amount in question and even in the complaint it has been stated to the effect that the parents of the respondent/accused have received that amount and further, the complaint in question has been filed in the year 2013 and only for the purpose of protracting the proceedings, the complainant has failed to make his appearance on 17-06-2015 and therefore, the dismissal order passed by the Trial Court is perfectly correct and the same does not require any interference.

6. It is seen from the records that on 17-06-2015, the appellant/complainant has failed to make his appearance and consequently, the Trial Court has dismissed the complaint under Section 256(1), Cr.P.C.

7. Considering the fact that the complaint in question has not been dismissed on merits and only due to default on the part of the complainant the same has been dismissed and also considering that sufficient opportunity should be given to both parties, this Court is of the view to set aside the dismissal order passed in C.C.No.5 of 2015 dated 17-06-2015.

In fine, this criminal appeal is allowed. The dismissal order passed in C.C.No.5 of 2015 dated 17-06-2015 is set aside and C.C.No.5 of 2015 is ordered to be restored to file. The Trial Court is directed to dispose of C.C.No.5 of 2015 before the end of March 2016 and report the same to the Registry without fail.

glp

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Fast Track Court at Magisterial Level-2, Egmore, Chennai - 8.
2. -DO- THRO' The Chief Metropolitan Magistrate, Egmore, Chennai-8.

COPY TO:- The Section Officer, Crl.Section, High Court, Mds.

+ 1 cc to Mr.V.K. Rajagopalan, Advocate Sr 2863

+ 1 cc to Mr.A.D. Jagadish Chandira , Advocate Sr 2626

KR/4/2/16

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