

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.232 of 2010

V.Sivashankaran

.. Appellant /complainant

Vs

N.Vijayraj

.. Respondent/accused

Prayer:- Criminal Appeal filed under Section 378(4) Cr.P.C., to set aside the judgment dated 28.01.2010 in C.C.No.367 of 2008 on the file of the Judicial Magistrate Court-II, Puducherry.

For Appellant : M/s.J.Kumaran

For Respondent : Mr.V.Balamurugane

JUDGEMENT

The appellant is the complainant in C.C.No.367 of 2008 which was dismissed by the Judicial Magistrate Court-II, Puducherry. The respondent herein stood charged for the offences under Sections 138 and 142 of the Negotiable Instrument Act, 1881. By judgment dated 28.01.2010, the Trial Court dismissed the complaint, since the appellant/complainant was called absent, without any representation. Challenging the above said dismissal order, the appellant is before this Court with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:-

The respondent/accused borrowed a sum of Rs.50,000/- from the appellant/complainant, for his business purpose and failed to repay the same within the stipulated time. After repeated demands, the accused issued a cheque dated 25.09.2007 bearing No.708234 drawn on INDUSIND Bank Limited Pondicherry-605 001 in favour of the complainant. When the same was sent for collection, due to insufficient funds, it was dishonoured. The complainant, through a registered letter, sent notice through his advocate dated 28.12.2007, for which, the accused remained silent. Hence, the appellant/complainant filed a complaint before the Judicial Magistrate Court-II, Puducherry, under Sections 138 and 142 of the Negotiable

Instruments Act r/w Sections 190 and 200 of Cr.P.C. The Trial Court took the complaint on file and proceeded.

3. Learned counsel for the appellant would submit that the appellant/complainant was examined-in-chief as PW1 and the matter was posted for cross-examination. On 28.01.2010 also, the complainant could not present for cross examination. Hence, the Trial Court has dismissed the complaint.

4. The learned counsel for the appellant would further submit that the absence of the complainant / appellant before the Trial Court on 28.01.2010 is neither wilful nor wanton and hence, the order passed on 28.01.2010 by the Trial Court is liable to be set aside on the following grounds:

(a) On 07.09.2009 and 19.11.2009, though the appellant was present and ready for cross examination, the matter was adjourned only at the request of the respondent.

(b) On 18.11.2009, respondent was absent and petition was filed under Section 317 of Cr.P.C to condone the absence of the respondent.

(c) If notice would have been served to the appellant before dismissing the complaint, he would have proved that he was held up with college semester examination on 28.01.2010.

The learned counsel for the appellant has also furnished a copy of the docket order of the trial court.

5. Learned counsel for the appellant would further submit that the appellant was present for almost all hearings and only for two hearings alone, he was not present. However, the learned Trial Judge dismissed the case. Further, he submitted that since the complaint was dismissed before the Trial Court, only on the ground of non-appearance of the appellant/complainant, one more opportunity may be given to the appellant to proceed with the case further, by imposing costs.

6. Learned counsel for the respondent would submit that on 24.06.2009, Chief Examination was completed and later on, the complainant was not present for cross examination. Due to default on the part of the appellant/complainant, the matter stands dismissed. He would further submit that even though sufficient opportunity was given to the appellant, he protracted the matter, simply without any valid reason.

7. Heard both sides. Perused the materials on record carefully.

Perusal of the certified copy of the docket orders of the trial court filed by the learned counsel for the appellant reveals that when the matter came up before the trial court on 24.06.2009, the appellant/complainant had filed a proof affidavit for the examination-in-Chief as PW1, the same was recorded and Exs.P1 to P4 were marked. Then the matter was posted to 30.07.2009. On that day, the complainant was absent

and petition was filed under Section 256 of Cr.P.C., and the same was allowed and posted to 17.08.2009. On that day, the complainant was not present and filed petition under section 256 of Cr.P.C., and the same was allowed and posted to 04.09.2009 during which day, holiday was declared. Finally, when the matter came up on 30.12.2009, there was no representation for the complainant. Hence, the matter was adjourned to 28.01.2010. On that day also, complainant was absent. Hence, the Trial Court recorded the absence of the complainant and dismissed the petition.

8. Considering the above said facts and circumstances of the case and submissions made on either side and considering the fact that since the complaint was not disposed of on merits and that, in order to give an opportunity to the appellant and to compensate the respondent for the inconvenience caused to him, in the interest of justice, this court is inclined to allow the appeal conditionally. Accordingly, the order passed by the trial court is set aside and this Appeal is allowed, on condition of payment of Rs.5,000/- (Rupees Five Thousand Only), by the appellant to the respondent, within a period of four weeks from the date of receipt of copy of this judgment.

9. The Trial court is directed to dispose of C.C.No.367 of 2008 within a period of three months from the date of receipt of a copy of this judgment and both the parties are directed to cooperate with the Trial Court in the disposal of the case.

Sd/-
Assistant Registrar(CO)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

The Judicial Magistrate Court-II, Puducherry.

+1cc to Mr.J.Kumaran, Advocate, S.R.No.59802
+1cc to Mr.V.AYYADURAI, Advocate, S.R.No.59273

(CO)RV
CP(12/11/2016)

Cr1.A.No.232 of 2010