

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.11.2016

Pronounced on : 11.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.342 of 2010

M.V.Muniraj

... Appellant/Complainant

Vs

M.Shanmugam

... Respondent/Accused

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the order of Acquittal of the respondent for non-prosecution of the case by the Appellant made in C.C.No.6 of 2009 on the file of the Judicial Magistrate Court, Gudiyattam dated 16.04.2010.

For Appellant : Mr.K.A. Ravindran

For Respondent : Mr.G.Vinoth Kumar

JUDGEMENT

This Criminal Appeal arises against the order of Acquittal of the respondent for non-prosecution of the case by the Appellant in C.C.No.6 of 2009 dated 16.04.2010 on the file of the Judicial Magistrate Court, Gudiyattam.

2. The appellant is the complainant in C.C.No.6 of 2009 which was dismissed by the Judicial Magistrate Court, Gudiyattam. The respondent herein stood charged for the offences under Section 138 of the Negotiable Instrument Act, 1881. By judgment dated 16.04.2010, 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.

3. The case of the appellant is that:

The appellant/complainant has filed a complaint before the learned Judicial Magistrate, Gudiyattam u/s.138 of Negotiable Instruments Act. The respondent issued a cheque for a sum of Rs.60,000/- drawn on South Indian Bank, Gudiyattam Branch payable on 22.11.2008 to discharge the

amount borrowed under a pronote. On presentation of the cheque the same was dishonoured. After exchange of statutory notice, the appellant filed a complaint before the learned Judicial Magistrate, Gudiyattam u/s.138 of the Negotiable Instruments Act and the same was taken on file. After service of notices, the matter was posted on 25.03.2010. Since the counsel noted the date wrongly, they could not present before the Court on that day and the case was adjourned on 16.04.2010. When the case was called on 16.04.2010, neither the appellant nor his counsel present in the court. The counsel for the appellant who were held up in Sub-Court and Munsif Court respectively could not make their presence when the case was called. After finishing their work, they rushed to the Court to make out their case. By the time, the case was called and the same was disposed of for non-prosecution on that day itself and the respondent/accused was acquitted under Section 256 of Cr.P.C., Aggrieved against the order of Acquittal, the appellant has no other remedy except to file this Appeal before this Hon'ble Court.

4. The learned counsel for the appellant would submit that the above said complaint was taken on file by the learned Magistrate, issued summons to the accused and the accused has also entered appearance through the counsel. Lastly, the matter was posted on 16.04.2010. The appellant /complainant and his counsel, who was held up in other Courts, could not represent the case, and by the time, the case was called and acquitted the accused. Aggrieved with the above said order passed by the trial court dated 16.04.2010 in C.C.No.6/2009. The appellant/complainant has preferred this present Criminal Appeal on the ground that the trial court did not give opportunity to the appellant and their counsel to make out their case and disposed of the case on merits. Further he would submit that the absence of the counsel is neither wilful nor wanton. Though the fact that he was engaged in other court and the same had been brought before the trial court, without considering the fact, the trial court, has dismissed the complaint. Prior to dismissal of complaint for non-prosecution, notice should have been given to the complainant. But no notice was given. Further, he would submit that since the case has not been disposed of on merit, one more opportunity may be given to the Appellant/Complainant.

5. Learned counsel for the respondent would submit that when the matter was called on 25.03.2015, neither the appellant nor the learned counsel for the appellant appeared before the court. Hence, the matter was adjourned to 16.04.2010. Even on 16.04.2010 also, when the matter was taken up for hearing, neither the appellant nor the counsel for the appellant present and only the respondent counsel was present. Therefore, the trial court found that the Appellant/Complainant was not interested to proceed further which ends

in the dismissal of the complaint. Therefore, the accused was acquitted u/s.256 of Cr.P.C.,

6. Heard both sides and perused the materials placed on record.

7. On perusal of the available materials on record, it is revealed that the complaint in C.C.No.6/2009 on the file of the Judicial Magistrate, Gudiyatham was disposed of on 16.04.2010 and acquitted the accused as per Section 256 of Cr.P.C., for non-prosecution of the appellant/complainant and further the records reveal that the complaint has not been disposed of on merits, the order of the trial court would show that when the matter came up for hearing on 16.04.2010, neither the appellant nor his counsel present. Hence, the respondent was acquitted. The perusal of the records reveal that the trial court has even not given any notice to the appellant/complainant before passing the dismissal order. The learned counsel for the appellant/complainant would submit that since he was engaged in some other court, he could not appear before the trial court on that particular date when the matter was called. But the trial court either gave a further time or send a final notice before acquitting the accused.

8. Considering the above said facts and circumstances of the case and submissions made on either side and considering the fact that the complaint was not disposed of on merits and because of the non-appearance of the learned counsel for the appellant, the complaint was dismissed, for which, the appellant should not suffer. However, in the interest of justice, this court is inclined to allow the appeal. At the same time, the respondent/accused has to be compensated in terms for the inconvenience caused to him. Accordingly, the order passed by the trial court is set aside and this Appeal is allowed, on condition of payment of Rs.10,000/- (Rupees Ten Thousand Only), by the appellant to the respondent on or before 30.11.2016. On payment of the above said amount, the appeal will be allowed, failing which, the appeal stands dismissed automatically.

9. Since the matter is of the year 2010, the Trial court is directed to dispose of C.C.No.6 of 2009 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 for the early disposal of the case.

Sd/-

Assistant Registrar(CS III)

//True Copy//

gv

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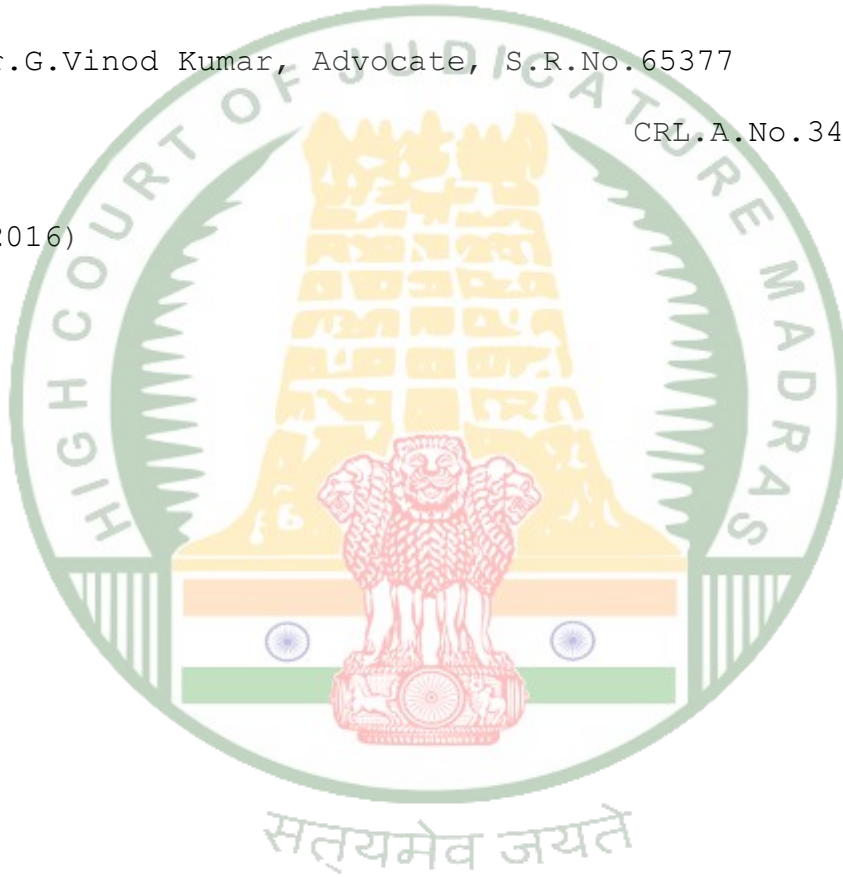
1.The Judicial Magistrate Court,
Gudiyattam.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.G.Vinod Kumar, Advocate, S.R.No.65377

CRL.A.No.342 of 2010

NM(CO)
CA(18/11/2016)



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