

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :11.11.2016

C O R A M

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

Criminal Appeal No.767 of 2016

M/s.Sree Gokulam Chits &
Finance Co., (P) Limited,
Represented by its Manager,
Mr.M.Hariharan, Registered
at Mylapore its Branch Officer,
No.6/7, V.R. Complex,
Motilal Street, Thiruvallur - 602 001.

...Appellant/Complainant

Vs

R.Satheesh

... Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 Cr.P.C., as against the Judgment in C.C.No.45 of 2013 dated 29.01.2015 passed by the Fast Track Court Magisterial Level, Thiruvallur and set aside the same.

For Appellant : Mr.L.Rajasekar

For Respondent : Private Notice Served
No appearance

JUDGMENT

Heard the Learned Counsel for the Appellant/Complainant.

2.Since this Court has held that the private service taken on behalf of the Appellant/Complainant was a sufficient one in CrI.O.P. No.4663 of 2016 and also, on behalf of the Respondent/Accused, there is no representation either in person or through Learned Counsel, this Court proceeds with the hearing of main Criminal Appeal, on merits.

3.At the outset, this Court points out that today, the CrI.O.P.No.4663 of 2016 [seeking 'Grant of Special Leave to prefer an Appeal'] was allowed by this Court for the reasons assigned therein.

4.The Appellant/Complainant has preferred the instant Criminal Appeal before this Court as against the Judgment dated 29.01.2015 in C.C.No.45 of 2013 passed by the Learned Judicial Magistrate, Fast Track Court, Thiruvallur.

5.According to the Learned Counsel for the Appellant/Complainant, the trial Court had erroneously acquitted the Respondent /Accused which is contrary to weight of evidence and also that the finding of the trial Court that the Appellant/Complainant had not produced the documents notwithstanding the fact that the sufficient adjournments were granted, is factually an incorrect one.

6.The Learned Counsel for the Appellant urges before this Court that the trial Court ought to have seen that the Appellant/Complainant was appearing before the Court regularly and proceeding with the case and in fact, the trial Court committed a mistake in dismissing the complaint, by dismissing the petition filed by the Complainant side to condone the absence of the Complainant on 29.01.2015.

7.At his juncture, this Court, on perusal of the Judgment of Acquittal passed by the trial Court in C.C.No.45 of 2013 dated 29.01.2015, is of the considered view that the trial Court, at paragraphs 14 and 15, had observed the following:

"14.Coming to the present case in hand, despite sufficient opportunities as many as 15 adjournments being granted to the complainant to make himself present for cross examination and for production of relevant documents. The complainant failed to make his presence for the cross examination neither he produced the documents before this Court. The presence of the complainant to-day is essential for prosecution of the case. In spite of that, he failed to appear before this court and no just cause has been shown by the complainant to condone his absence. Hence the petition filed on behalf of complainant to condone his absence is dismissed. This clearly shows that he is not interested in prosecuting his case and gives rise to an adverse circumstance against complainant.

15.As such, the complaint is dismissed for non-prosecution and the accused is acquitted u/s. 256(1) Cr.P.C."

8.It cannot be gainsaid that on default of the Complainant's appearance before the trial Court, the Learned Judicial Magistrate has a discretion either to dismiss the complaint and acquit the Accused or to adjourn the case for further hearing. Undoubtedly, the powers conferred under Section 256 Cr.P.C. to a Court of Law should be exercised reasonably and only in a case where the Complainant had failed to appear without any just, valid and reasonable cause. Furthermore, the absence of Complainant on a given date of hearing may not be a reason for acquitting the Accused in a casual, routine and cavalier fashion by a Court of Law, in the considered opinion of this Court.

9.It is to be remembered that the term 'Day' indicates that a litigant to a given proceedings must remain present in Court when the case is called during the course of the whole day. Also, it cannot be forgotten that a dismissal of a complaint for non-appearance in early hours of the course 'Day of Hearing' is an improper one.

10.It is true that there is no legal requirement/a legal obligation for the Judicial Magistrate to wait till the close of the working day for proceedings. Moreover, the ingredients of Section 256(1) Cr.P.C. are to be resorted to with utmost care, circumspection and judicial caution /discretion. There is no two opinion of a primordial fact that the Appellant/Complainant owes a duty to be present on the date of hearing. But, for his non-appearance on each and every date of hearing and order of acquittal cannot be passed, as per decision Anjali Poral V. Santhosh Ghosh, 1986 CrL.L.J. 2110 (Cal.)

11.It is to be noted that the 'Tape' or 'Yardstick' to be applied by the Court concerned is to look into an aspect of the 'Good Faith' and a 'Short Cut Disposal'/'Wooden Approach' is not to be pressed into service for mere/just disposal of the case.

12.Indeed, the Criminal Procedure Code has no Section which expressly speaks of 'Discharge' of an Accused or disposal of complaint when the Complainant remained not present on the specified date of hearing.

13.As a matter of fact, the Learned Judicial Magistrate is to arrive at a subjective conclusion by adopting a purposeful, practical, pragmatic and rational approach, while exercising its personal/ subjective discretion in a judicious and diligent manner as to whether it can differ the proceedings to a given date or otherwise. Admittedly, in this regard, there is no Cast Iron Jacket Formula that owing to non-appearance of the Complainant a Court of Law in every case/all cases, it is to acquit an Accused.

14.In the upshot of detailed qualitative and quantitative

discussions and also this Court taking note of the fact that the Petitioner/Appellant/Complainant was examined in chief as P.W.1, but only failed to make his presence for further cross examination and also, on his side, documents were not produced before the trial Court, this Court opines that the dismissal of complaint for non-prosecution by the Appellant/Complainant is an incorrect one. As such, this Court, to promote substantial cause of Justice, interferes with the order passed by the trial Court in C.C.No.45 of 2013 dated 29.01.2015 and sets aside the same. Consequently, the Criminal Appeal succeeds.

15. In fine, the Criminal Appeal is allowed. Resultantly, the order passed by the trial Court in C.C.No.45 of 2013 dated 29.01.2015 is set aside by this Court for the reasons assigned in this Appeal. Further, the trial Court is directed to restore the complaint in C.C.No.45 of 2013 on its file within a period of one week from the date of receipt of copy of this Judgment and to proceed further in the manner known to Law and in accordance with Law. Before parting with the case, this Court directs the Appellant/Complainant to appear before the trial Court henceforth without any default. Also, the trial Court is directed to dispose of C.C.No.45 of 2013 within a period of three months thereafter and to report compliance to this Court.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Sgl

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To

1.The Judicial Magistrate,
Fast Track Court,
Thiruvallur.

2.The Registrar (Judicial)
High Court, Madras.

[For favour of information
and follow up action]

+ 1 cc to Mr.L. Rajasekar, Advocate SR.65273

Crl.A.No.767 of 2016
(2/2)

SK(CO)
Eu 21.12.16



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