

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.12.2016	Delivered on : 23.12.2017
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THE HONOURABLE MR.JUSTICE S.BASKARAN

Criminal Appeal No.760 of 2012

K.R.Shanmugam

..Appellant/Complainant

vs.

S.Gunasekar

..Respondent/Accused

Criminal Appeal filed under Section 378 of Cr.P.C., seeking to set aside the order made in S.T.C.No.1479 of 2007 by the Judicial Magistrate No.1, Coimbatore, dated 09.12.2011.

For appellant : Mr.C.Gunalan

For respondent : No appearance

JUDGMENT

The appellant/complainant has come forward with this appeal seeking to set aside the order of the trial court, dismissing the complaint lodged by him under Section 250 Cr.P.C., read with Section 138 and 142 of the Negotiable Instrument Act, against the respondent/accused herein.

2. The learned counsel appearing for the appellant states that they filed a complaint in S.T.C.No.1479 of 2007, before the trial court and the same was dismissed on 09.12.2011 under Section 250 Cr.P.C., due to non appearance of the appellant/petitioner before the court.

3. It is stated that the respondent/accused herein, issued 3 cheques in various dates for a total sum of Rs.6,50,000/- to discharge his liability and all the 3 cheques were dishonoured due to insufficient funds. Hence, the appellant/complainant herein, after complying with all the requirements under Negotiable Instruments Act, preferred the complaint, against the respondent herein, and the same was pending before the trial court, Judicial Magistrate No.I, Coimbatore. While the complaint was pending, the appellant/complainant was appearing before the court regularly, he met with a Road Accident on 26.10.2011 and for the same, he took treatment in a Private Hospital in Coimbatore. It was only due to the accident, the complainant was unable to appear before the court, nor give instruction to his counsel. S.T.C.No.1479 of 2007 was originally posted for hearing on 15.12.2011. But the same was taken up for hearing on 09.12.2011 and due to non appearance of the complainant, it was dismissed. According to the appellant, his non appearance nor his failure to instruct his counsel was not willful, but it was only due to the accident he met with. He also produced discharge summary from the hospital, where he took treatment, wherein, it is stated that he was admitted on 27.10.2011 and discharged on 01.11.2011. It is evident from the discharge summary that the appellant herein met with a Road Accident and suffered injuries. In such circumstances, the learned counsel for the appellant/complainant pleaded to set aside the impugned order since it will cause prejudice and untold misery to the appellant, if the

order is not set aside.

4. When this matter has been listed on 21.10.2016, there was no representation for the respondent, thereafter, on 09.12.2016, at the request of the respondent counsel, the matter was adjourned to 20.12.2016. But even on 20.12.2016 and 21.12.2016, there was no representation for the respondent. In such circumstances, considering the reason stated by the appellant and also the fact that the appellant/complainant was indisposed only due to the road accident he met with, it will be in the interest of justice to give him opportunity to contest the matter on merits. Hence, the impugned order dated 09.12.2011, is set aside. The Criminal Appeal is allowed. The matter in S.T.C.No.1479 of 2007 is restored to the file of Judicial Magistrate No.1, Coimbatore. The trial court is directed to dispose of the matter within a period of 6 months from the date of receipt of a copy of this order, after giving due notice to both sides.

Index:Yes/No

23.12.2016

nvsri

To

1.The Judicial Magistrate No.1, Coimbatore.

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

S.BASKARAN, J.

nvsri

Judgment in
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