

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.02.2017

C O R A M

THE HONOURABLE Mr.JUSTICE M.VENUGOPAL

Criminal Appeal No.105 of 2017

Ziavulla Hussain

... Appellant/Complainant

Vs

K.Karunakaran

... Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C., as against the order dated 30.12.2015 passed in C.C.No.77 of 2007 on the file of the Judicial Magistrate - I, at Krishnagiri.

For Appellant : Mr.M.Balasubramanian
For Respondent : No appearance

JUDGMENT

The Appellant/Complainant has filed the instant Criminal Appeal before this Court as against the order of dismissal dated 30.12.2015 in C.C.No.77 of 2007 passed by the Learned Judicial Magistrate-I, Krishnagiri.

2.At the outset, this Court points out that today, Cr1.O.P.No.24235 of 2016 [seeking Grant of Special Leave to prefer an Appeal] was allowed by this Court for the reasons assigned therein.

3.The Learned Counsel for the Appellant/Complainant urges before this Court that the Appellant/Complainant was not present only for two hearings on 01.12.2015 and 30.12.2015. In fact, as on date of passing of the dismissal order on 30.12.2015 in C.C.No.77 of 2007, NBW was pending against the Respondent/Accused and that apart, the Respondent/Accused, without receiving summons, is dragging on the matter for nearly eight years.

4.Advancing his arguments, the Learned Counsel for the Appellant takes a plea that when a Bailable Warrant was issued against the Respondent/Accused, the Appellant/Complainant was always ready and willing to conduct the case.

5.Expatiating his submissions, the Learned Counsel for the Appellant brings it to the notice of this Court that the

Appellant/ Complainant's Advocate had died and further, his junior Counsel, who was representing the Appellant/Complainant before the trial Court, was appointed as Government Pleader and therefore, he could not represent the Complainant in time on 30.12.2015.

6.Lastly, it is contended that for the fault of the Counsel, in not representing the Appellant's case, the client should not suffer.

7.It is an axiomatic principle in Law that in an Appeal against an order of acquittal, the Hon'ble High Court possesses all the powers and nothing less than the powers it possesses while hearing an Appeal against an order of conviction. Also, the High Court, on a scrutiny and reappraisal of the matter coupled with the available materials on record, can take a different view provided the findings recorded by the trial Court are a perverse and erroneous one. If there is any misreading of evidence or if a Point of Law or Fact is not taken into consideration by the trial Court at the time of passing the impugned order, then, that is also a good ground for the High Court to interfere with the orders of the trial Court.

8.It is true that there is presumption of innocence in favour of an Accused persons and such presumption gets strengthened by the order of acquittal passed in his favour by the trial Court. Only in exceptional circumstances, the Appellate Court for compelling reasons can interfere with the order of the trial Court and can reverse the order of acquittal passed by the trial Court, if the conclusions arrived at are contrary to the evidence on record or if the trial Court's approach in dealing with the entire subject matter in issue is found to be patently illegal or if the Judgment is unreasonable and is based on an erroneous appreciation of the Law and of the Facts of the case.

9.As far as the present case is concerned, this Court is of the considered view that when once the Appellant/Complainant had filed the complaint under Section 138 of the Negotiable Instruments Act and when the same was taken cognizance of by the trial Court and it is his prime duty to appear for the hearing of the case until his presence is dispensed with.

10.It is true that on a given day, when the Complainant remained absent, the trial Court has a wide discretion either to dismiss the complaint and to acquit the Accused or to adjourn the hearing. Undoubtedly, the powers envisaged under Section 256 of the Criminal Procedure Code are to be exercised by a Court of Law with meticulous care, caution and circumspection. Moreover, the absence or presence of a lawyer may also be taken into account by the trial Court at the time of determining whether to

postpone the hearing of the main case or not.

11.It may not be out of place for this Court to make a pertinent mention that when a Complainant remained absent on the given date of hearing, the learned Magistrate has the following options: (i) to acquit the Accused; or (ii) to adjourn the case for future dates; (iii) to dispense with the attendance of the Complainant and proceed with the case. It is within the absolute domain of the Court as to the course which it should be adopted.

12.It is to be remembered that in a case where a Court of Law thinks that it is not wise to adjourn the case for hearing, then, it shall acquit the Accused under Section 256(1) Cr.P.C. for non appearance of the Complainant and his Advocate. But, an order of acquittal would bar a fresh trial and therefore, such an order affecting a litigant's right is to be passed with great care, caution and circumspection.

13.Besides the above, it is to be pointed out by this Court that the absence of Complainant on a given day before the trial Court cannot be a ground for acquitting an Accused in a routine, casual and cavalier fashion. The acid test would be that whether there is a bona fide reason on the part of the Complainant to remain absent on the given date of hearing.

14.One cannot brush aside a vital fact that when a Complainant had remained absent for the hearing of a case, nowhere the Criminal Procedure Code say that the complaint is to be dismissed or the Accused should be discharged. Suffice it for this Court to point out that because of non appearance of Complainant, it is not necessary in all cases, but the Accused shall be acquitted. Absence on one or two occasions of the Complainant especially in a case under Section 138 of the Negotiable Instruments Act and not to be dismissed in the instant case, as opined by this Court.

15.As far as the present case is concerned, one cannot remain in oblivion of a vital fact that the Cheque dated 20.02.2006 purportedly issued by the Respondent/Accused to and in favour of the Appellant/ Complainant was missing from the trial Court records and obviously, the search is on for tracing out the said cheque. When NBW issued by the trial Court is pending against the Respondent/Accused and all the more, when the Appellant/Complainant had not paid the process fee, the trial Court had adopted a short-cut method of dismissing the complaint on account of that said default, besides there being no representation on the side of the Appellant/Complainant on 30.12.2015 in the main case. When NBW is pending for quite a long period and when the Complainant remained absent on 30.12.2015 and also when there was no representation on his

side, then, no useful purpose would be served in dismissing the complaint viz., main case in C.C.No.77 of 2007 and in fact, it could have exercised its due diligence and circumspection in adjourning the matter to a different date. However, such a procedure was not resorted to by the trial Court, which resulted in dismissal of the complaint in C.C.No.77 of 2007. Ordinarily, a Court of Law is to deliver substantial Justice to the parties. After all, the procedures prescribed are only handmaid of Justice. The trial Court had dismissed the complaint in C.C.No.77 of 2007 on the ground that the Appellant/Complainant had not paid the process fee and also there was no representation on 30.12.2015 and apart from that, NBW was pending till the date of dismissal of the complaint and no positive steps were taken on behalf of the Appellant/Complainant to produce the Respondent/Accused before Court, the trial Court had passed an order of dismissal, which in the considered opinion of this Court, is not a correct one, in the eye of Law. Therefore, this Court is left with no option, but to interfere with the said order of the trial Court passed in C.C.No.77 of 2007 and sets aside the same. Consequently, the Appeal is allowed.

16. In fine, the Criminal Appeal is allowed. Resultantly, the order passed by the trial Court in C.C.No.77 of 2007 dated 30.12.2015 is set aside by this Court for the reasons assigned in this Appeal. The trial Court is directed to restore the complaint in C.C.No.77 of 2007 on its file within a period of two weeks 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. Thereafter, the Appellant/Complainant is directed to pay the process fee for execution of NBW issued against the Respondent/Accused and on such payment of process fee, the trial Court shall issue the warrant against the Respondent/Accused for a given date of hearing. Further, the Appellant/Complainant is directed to appear before the trial Court henceforth on all hearing dates without assigning any lame duck excuses. Considering the fact that the issuance of Cheque dated 20.02.2006 and the C.C.No.77 is of the year 2007 and nearly nine years have elapsed, this Court directs the trial Court to dispose of the said C.C.No.77 of 2007 within a period of four months thereafter and to report compliance to this Court.

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Assistant Registrar

//True copy//

Sub Assistant Registrar

Sgl

To

1.The Judicial Magistrate-I,
Krishnagiri.

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

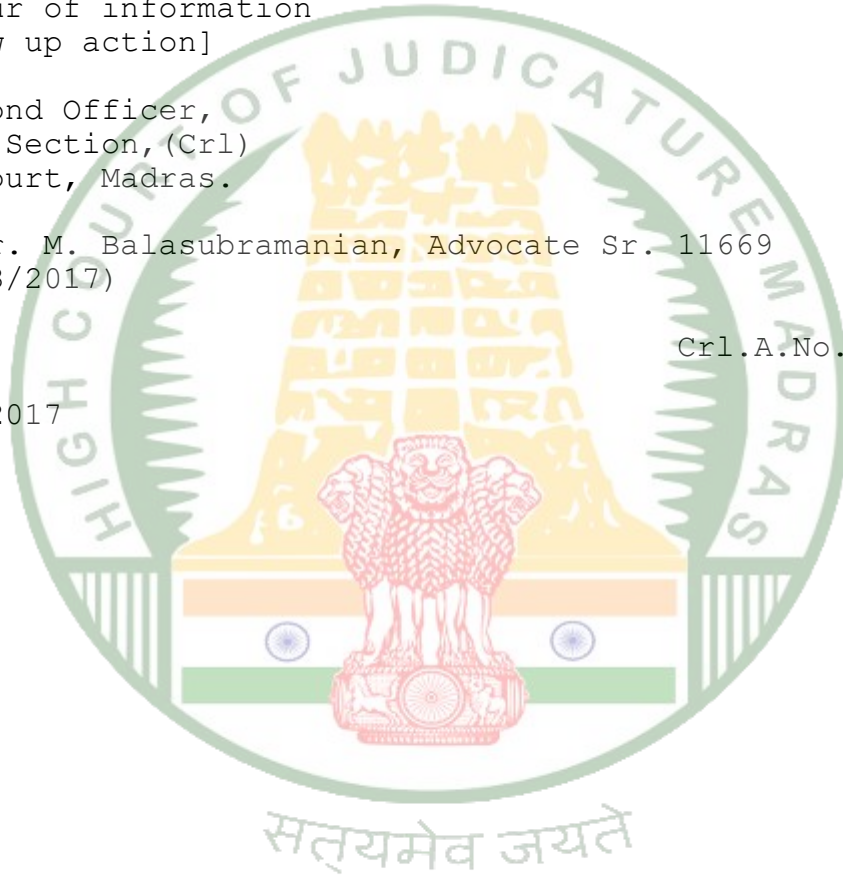
[For favour of information
and follow up action]

3.The Second Officer,
Record Section, (Crl)
High Court, Madras.

+1cc to Mr. M. Balasubramanian, Advocate Sr. 11669
dt.(22/03/2017)

Crl.A.No.105 of 2017

KJI (CO)
VS 13.03.2017



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