

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2017

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

Crl.A.No. 150 of 2017

C.Senthilkumar

... Appellant / Complainant

Vs.

N.Senthilkumar

Prop. Of Sri Senthilkumar Textiles

228/A, Vannankaduthottam

Subbarayanpudur (Post)

Somanur,

Coimbatore - 641 668

Accused

... Respondent /

PRAYER: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure to set aside the Order dated 27.09.2016 passed by the Learned Judicial Magistrate(Fast Track Court No.1 at Magisterial Level, Coimbatore) in C.C.No.809 of 2013 (Old C.C.No.830 of 2013 on the file of the Learned Judicial Magistrate No.2, Coimbatore)

For Appellant : Mr.P.Chandrasekar

For Respondent : Mr.K.S.Karthik Raja

J U D G M E N T

The Appellant / Complainant has preferred the instant Criminal Appeal before this Court (as an aggrieved person) as against the Judgment of Acquittal dated 27.09.2016 in C.C.No.809 of 2013 passed by the Learned Judicial Magistrate (FTC No.I, Mahila Court), Coimbatore)

2. According to the Appellant, the complaint filed by him in C.C.No.809 of 2013 on the file of the trial Court came to be dismissed on 27.09.2016 because of the reason that he was not ready to proceed with the case and further the trial Court had proceeded to observe in the impugned order that 'Ample opportunity was given to the Complainant to proceed with the trial' and in as much as the Respondent / Accused was appearing before the trial Court regularly, ultimately, the case in C.C.No.809 of 2013 was dismissed resulting in an 'Order of Acquittal' being passed against the Respondent / Accused under Section 256 (1) of Cr.P.C.,

3. At this juncture, the Learned Counsel for the Appellant / Complainant contends that before the trial Court, a Criminal Miscellaneous Petition was filed in C.C.No.809 of 2013 stating that the Respondent / Accused was not well and hence he was not in a position to attend the Court and as such, a request was made to condone his absence. But the trial Court had dismissed the said Criminal Miscellaneous Petition. In this connection, this Court on going through the Impugned Order of Dismissal dated 27.09.2016 in C.C.No.809 of 2013 is of the earnest view that the Appellant / Complainant was provided with several opportunities and inspite of the same he was not ready to proceed with the case, left with no option, the trial Court came to a consequent conclusion of 'Dismissing the Complaint', which ended in Acquittal in terms of ingredients of Section 256 of Cr.P.C.,

4. The Learned Counsel for the Appellant / Complainant before this Court pleads that 'Mercy may be showered' upon him because of the reason that when once the complaint in C.C.No.809 of 2013 on the file of the trial Court was dismissed, then, it is very difficult for the Appellant / Complainant to file a fresh complaint because of the dismissal of the earlier complaint.

5. Per contra, it is the submission of the Learned Counsel for the Respondent that the Appellant / Complainant was not diligent and ready to proceed with the case before the trial Court and in fact the original complaint was transferred later on 07.04.2014 before the file of the Learned Judicial Magistrate No.II, Coimbatore and inspite of the fact that numerous opportunities were provided to the Complainant/ Appellant and all the more when the Respondent / Accused was regularly appearing before the trial Court, the trial Court by taking note of all the attendant facts and circumstances had ultimately dismissed the complaint, which in Law is free from any flaw.

6. This Court had heard the Learned Counsel for the Appellant and the Learned Counsel for the Respondent / Accused and noticed their contentions.

7. At the outset, this Court pertinently points out that the power to be exercised by the Court concerned under Section 256 of Cr.P.C., is very wide and a reasonable one. In fact, the said power is to be exercised by the trial Court only when the Appellant / Complainant had failed to appear before it without any valid cause. In this regard this Court significantly points out that in a criminal case before the trial Court, it is the primordial duty of the respective parties to appear on the hearing dates unless and until their presence is dispensed with for a particular date of hearing.

8. Even if an Accused had not appeared for a particular date of hearing, then also the Complainant in a given case ought to have appeared before the trial Court, but the fact of the matter is that just because Complainant remained absent on a particular date of hearing, then, it is not necessary for the trial Court

to dismiss the complaint either as a matter of routine or as a matter of course. Indeed, the trial Court is to see whether there is any 'Good Faith' / 'Sufficient Cause' on the part of the Complainant not to be present on a given date of Hearing. Ordinarily, if a complainant remained absent at the time of case being called before the trial Court and when the main case is of old one, then, the absence of the Complainant would normally lead the trial Court to come to a conclusion that the complainant is not evincing any interest or he adopts a laissez faire or lackadaisical attitude. No where the Criminal Procedure Code contemplates that in the absence of Complainant, a complaint filed by the Complainant is to be dismissed. In a case where the complainant had not appeared before the trial Court on a given date of hearing and remained absent, there are three courses open to the trial Judge to pass the following Orders.

- (i) To acquit the Accused;
- (ii) To Postpone the case for a future date;
- (iii) To dispense with the attendance of the Complainant and proceed with the case.

However, it is to be stated with care and caution that it is the ultimate discretion of a Court of Law as to which of the aforesaid courses must be resorted to, by exercising its judicial discretion.

9. One cannot brush aside a prime fact that if an Order of Acquittal under Section 256 of Cr.P.C., is passed by the trial Court because of the absence of the complainant on a given date of hearing, then, the said Order of Acquittal may operate as a bar under Section 300 of Cr.P.C., to the trial of the Accused for the same offence. Therefore, the 'Order of Acquittal' will looms large and gain significance.

10. It is to be borne in mind that in a case under Section 138 of the Negotiable Instruments Act, 1881, when a case is dismissed for non appearance of the Accused before the trial Court on a given date of hearing, then, in the interest of substantial justice, the same is to be set aside because of the simple reason that in the present case, the Appellant / Complainant had admittedly filed a Criminal Miscellaneous Petition before the trial Court stating that he was not well to attend the date of hearing on 27.09.2016. However, the trial Court had not accepted the said reason and further observed that the Appellant / Complainant was not ready to proceed with the case and inspite of ample opportunities were given to him.

11. As far as the present case is concerned, the Appellant / Complainant had admittedly filed a Criminal Miscellaneous Petition before the trial Court by assigning the reason and therefore he could not attend the date of hearing on 27.09.2016, in this regard this Court is of the considered view that the trial Court ought to have taken a lenient and liberal view in condoning the absence of the Complainant on 27.09.2016 because of the simple reason that Section 300 Cr.P.C., bars the trial of an Accused in respect of the same offence. Since that course of action was not resorted to and impugned order of dismissal came

to be passed by the trial Court, this Court by keeping in mind of the fact that the Appellant / Complainant had come out with a reason before this Court that on 27.09.2016, the Appellant / Complainant was not well and therefore he could not attend the hearing on the said date before the trial Court, at this stage, this Court overriding hyper technicalities and not adopting a pedantic approach but by taking a practical, pragmatic, purposeful meaningful and a rational approach, interferes with the said order of dismissal of the complaint dated 27.09.2016 in C.C.No.809 of 2013 passed by the trial Court and sets aside the same in the interest of justice, subject to the condition that the Appellant / Complainant shall remit a sum of Rs.2,000/- (Rupees Two Thousand only) to the Tamilnadu State Mediation and Conciliation Centre, High Court, Madras on or before 27.03.2017. Viewed in that perspective, the Criminal Appeal succeeds.

12. In fine, the Criminal Appeal is allowed. The order of Acquittal dated 27.09.2016 in C.C.No.809 of 2013 passed by the Learned Judicial Magistrate (FTC No.I, Mahila Court), Coimbatore) is hereby set aside by this Court for the reasons assigned in this Appeal.

13. Before parting with the case, this Court candidly makes it clear that the Appellant / Complainant is directed to pay the cost of Rs.2,000/- (Rupees Two Thousand only) well within the time fixed by this Court earlier and in this regard, no further time shall be granted. On production of payment of receipt of cost, the trial Court is directed to restore the C.C.No.809 of 2013 to its file within one week. Thereafter, the trial Court shall proceed with the main case in C.C.No.809 of 2013 and dispose of the same within a period of four months from the date of receipt of this Judgment. The respective parties are directed to lend their unstinted co-operation and assistance to the trial Court in disposing of the case. Soon after completion of the main case, the trial Court is directed to send compliance report to this Court without fail.

Sd/- सत्यमेव जयते

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

ssd

To

1. The Learned Judicial Magistrate No.1
(Fast Track Court No.1 at Magisterial Level, Coimbatore)

2.The Judicial Magistrate No.2,
Coimbatore

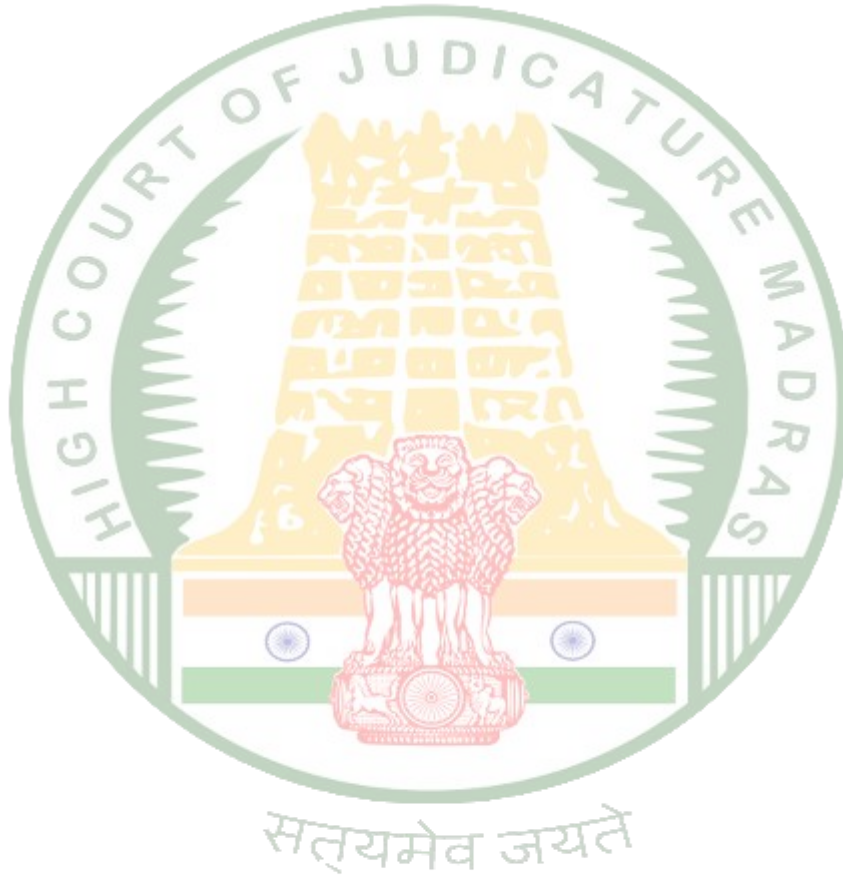
3. The Public Prosecutor,
High Court, Madras.

4. The Section Officer,
Record Section,
High Court, Madras

+1cc to Mr.P.Chandrasekar,Advocate sr.16652

Cr1.A.No. 150 of 2017

br(co)
ss(10/4/2017)



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