

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18. 12.2017

CORAM:

THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

Criminal Appeal No.14 of 2010

K.Senthil Kumar .. Appellant

Vs

P. Geetha .. Respondent

Prayer:- Criminal Appeal filed under Section 378 Cr.P.C., praying to set aside the judgment of acquittal passed by the trial Court in C.C.No.213 of 2007, dated 01.02.2008 on the file of the learned Judicial Magistrate-I, Gopichettipalayam.

For Appellant : Mr.P.R.Balasubramanian

For Respondent : No Appearance

WEB COPY
JUDGEMENT

Heard the learned counsel appearing for the appellant.

2. This criminal appeal has been filed by the appellant/complainant as against the Order of acquittal passed in

C.C.No.213 of 2007, dated 01.02.2008 on the file of the learned Judicial Magistrate-I, Gopichettipalayam, Erode District.

3. The brief facts of the case of the appellant/complainant is as follows:-

The appellant/complainant is a close family friend of the respondent. The respondent borrowed a sum of Rs.98,000/-from the appellant/complainant on 08.12.2017 and issued a cheque dated 08.05.2007 (Ex.P.1) drawn on Catholic Syrian Bank. When the appellant/complainant presented the cheque for encashment through his bankers viz., the Tamilnadu Mercantile Bank Limited, the same was returned for the reason "insufficient funds". The cheque return memo issued by both the complainant and the accused banks are marked as Ex.P.2 & Ex.P.3 respectively. Thereafter, the appellant/complainant issued a legal notice (Ex.P.4) dated 23.05.2007 to the respondent/accused requesting him to pay the amount due under the cheque. The respondent/accused received the said notice as is evidenced by the postal acknowledgment card (Ex.P.5). However the respondent did not come forward to make good the payment and he did not also send any reply to the notice issued by the appellant/complainant. Therefore, the appellant/complainant filed a complaint before the learned Judicial Magistrate-I, Gopichettipalayam for an offence punishable U/s 138 of the Negotiable Instruments Act 1881 against the respondent/accused.

4. The learned Judicial Magistrate-I, Gopichettipalayam dismissed the complaint on 01.02.2008 and acquitted the accused U/s 255(1) of the Code of Criminal Procedure for non prosecution.

5. The learned counsel for the appellant/complainant would contend that the complaint was taken on file only on 29.06.2007 and the learned Judicial Magistrate-I, Gopichettipalayam dismissed the complaint on 01.02.2008. A perusal of the records shows that the learned Judicial Magistrate-I, Gopichettipalayam has not given sufficient opportunity to the appellant/complainant. Therefore, the Judgment of the learned Judicial Magistrate-I, Gopichettipalayam, Erode District, dated 01.02.2008 is set aside and both the appellant and respondent are directed to appear before the concerned Court on 30.01.2018. In the instant case, though the respondent was served, there was no representation on his side. However, since no final verdict is given and the matter is remitted back to the learned Judicial Magistrate-I, Gopichettipalayam, Erode District for fresh disposal, I do not find any reason to appoint a counsel on behalf of the accused. Since the complaint is of the year 2007, the learned Judicial Magistrate-I, Gopichettipalayam, Erode District is directed to dispose of the case within a period of three months from the date of receipt of a copy of this Order.

R.HEMALATHA, J.,

ksa

6. With the above observation, this Crl.A.No.14 of 2010 is allowed. The Registry, High Court, Madras is directed to send the records without any delay.

18.12.2017

ksa

Index:Yes/ No

To

1. The XVI Metropolitan Magistrate,
George Town,
Chennai.

2.The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

WEB COPY

Crl.A.No. 14 of 2010