

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 29.08.2017****CORAM****THE HONOURABLE MR.JUSTICE C.T.SELVAM****Criminal Appeal No.44 of 2009**

M/s.Sree Gokulam Chit & Finance Co.,(P) Ltd.,
Rep. By its Legal Assistant
Mr.K.Satheesh Kumar
Sree Gokulam Towers,
No.66, Arcot Road, Chennai-600 024.

.. Appellant/Complainant

Vs.

D.Latha Mettilda

.. Respondent/Accused

Criminal Appeal preferred under Section 378 of Cr.P.C.,
praying to call for the records and judgement dated 10.09.2008
acquitting the respondent/accused in C.C.No.6838 of 2005 passed
by learned VII Metropolitan Magistrate, George Town, Chennai and
set aside the same.

For Appellant : Mr.L.Rajasekar

For Respondent : No appearance

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JUDGMENT

This appeal arises against the judgment dated
10.09.2008 passed by learned VII Metropolitan Magistrate, George
Town, Chennai, passed in C.C.No.6838 of 2005.

2. Heard learned counsel for appellant. As there was no representation for the respondent on the last hearing date, this Court directed the Registry to post the matter under the head "For Orders" on 24.08.2017 and it stands posted today. Even now, there is no representation for the respondent.

3. Although an order of dismissal under Section 256(1) Cr.P.C., has been passed in the year 2008 and the same relates to case of the year 2005 and in normal circumstances, this Court would not interfere. We find that immediately upon the dismissal of the case in C.C.No.6838 of 2005 on the file of learned VII Metropolitan Magistrate, George Town, Chennai-1 on 10.09.2008, the present appeal has been filed.

4. Thus the long pendency of the appeal before this Court would not be a consideration for denying relief to the appellant, if the same is warranted. A perusal of the adjudication proceedings informed in the grounds of the appeal reveals that the appellant/complainant has been fairly vigilant in prosecuting the case and much delay has been occasioned owing to absence of the respondent/accused before Court below. Such absence has given

rise to issue Non-bailable Warrant against him, which, subsequently has been recalled. After the recall of Non-bailable Warrant, the complainant has been absent on three hearing dates, leading to dismissal of the complaint.

5. Court below, on 18.08.2008 has issued notice to the appellant/complainant calling for his appearance on 09.09.2008. There is nothing on record to indicate that such notice was served on the appellant/complainant. The case has been called on 09.09.2008, when the complainant's absence has been noted and on 10.09.2008, the order of dismissal under Section 256 Cr.P.C., has been passed. Where there is no proof of Court notice dated 18.08.2008 informing the hearing of 09.09.2008 having been served, the Court below is not justified in having dismissed the complaint on 10.09.2008.

6. For the aforesaid reasons, this Criminal Appeal shall stand allowed. Court below is directed to restore the case in C.C.No.6838 of 2005 on the file of learned VII Metropolitan Magistrate, George Town, Chennai, issue notice to both appellant/complainant and respondent/accused informing the date of hearing and proceed further in accordance with law and dispose

C.T.SELVAM, J.,

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of the same as expeditiously as possible, in any event within a period of four months from the date of receipt of a copy of this order.

29.08.2017

Index : Yes/No
Internet : Yes
kmi

Note: Issue Order Copy on 11.10.2017.

To

The VII Metropolitan Magistrate,
George Town, Chennai.

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