

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2017

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.719 of 2009

M/s.Saibala Credits (P) Ltd.
Rep.by its Managing Director,
Thiru.G.Thilagar

.. Appellant

Vs.

S.Pushphammal

.. Respondent

PRAYER: Criminal Appeal filed under Section 378 Cr.P.C Praying to set aside the order dated 08.04.2003 made in C.C.No.520 of 2001 on the file of the Judicial Magistrate, Tambaram.

For Appellant : Mr.A.P.Venkataraman

For Respondent : M/s.J.J.R.Edwin

JUDGMENT

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The appellant-complainant has filed the present appeal under Section 378 of Cr.P.C against the order of acquittal passed by the learned Judicial Magistrate in C.C.No.520 of 2001 on 08.04.2003.

2. The brief facts of the case of the complainant are as follows:

The respondent/accused borrowed a sum of Rs.9,11,259/- from the appellant/plaintiff and executed an equitable mortgage along with her sons by deposit of title deeds on 20.06.2001. The appellant/complainant issued a notice to the respondent/accused calling upon her to repay the amount of Rs.9,11,259/- due under the equitable mortgage. The respondent/accused after receiving the said notice issued a cheque bearing No.393527 dated 07.07.2001 drawn on Indian Overseas Bank, Saligramam branch for a sum of Rs.16,84,159/- towards the repayment of the said loan amount. When the appellant/complainant presented the cheque through his Bankers namely Catholic Syrian Bank, Pallavaram branch, the cheque was returned for the reason "insufficient funds". Thereafter, the appellant/complainant issued the notice to the respondent/accused calling upon her to repay the loan amount of Rs.16,84,159/- within 15 days from the date of receipt of the notice. Eventhough, the respondent received the said notice, she did not respond. Therefore, the appellant/complainant filed the complaint before the Judicial Magistrate, Tambaram for the offences under Section 138 and 142(1) of the Negotiable Instruments Act.

3. The learned Judicial Magistrate, Tambaram has dismissed the complaint on 08.04.2003. The learned counsel for the appellant contended that C.C.No.520 of 2001 was dismissed for non prosecution and not on merits. He would further contend that the complainant was present before the Court on all the occasions including 08.04.2003 and that his counsel alone was not present on that day.

4. The amount involved in the present case is Rs.16,85,149/- and the learned Judicial Magistrate, Tambaram should have given sufficient opportunities to the appellant/complainant to put forth his contentions. The learned counsel for the appellant also contended that the case was in part heard stage and the learned Judicial Magistrate has dismissed the complaint merely because the counsel for the appellant was not present on that particular date. It is also his contention that the case was being adjourned only at the request of the respondent.

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5. As already observed the amount involved in this case is Rs.16,85,149/- and the case in C.C.No.520 of 2001 was in part heard stage. Therefore, the order of acquittal passed by the Trial Court

R.HEMALATHA.J,

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warrants interference by this Court. However, since the case is of the year 2001, the learned Judicial Magistrate is directed to dispose of the case within a period of three months from the date of receipt of this order. Registry is directed to send the records to the Court with least possible delay.

6 . With the above observation, the appeal is allowed and the order of acquittal passed by the Trial Court is set aside.

15.12.2017

Internet : Yes/ No
Speaking/Non Speaking Order
VV

To

1. The Judicial Magistrate, Tambaram
2. The Public Prosecutor, High Court, Madras.

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