

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated : 31.07.2017****Coram:****The Honourable Mr. Justice C.T. Selvam****Criminal Appeal No. 80 of 2009**

M/s. R.A.S. Theatre,
A Regd. Partnership firm,
Rep. by its Partner S.V.Kesavarajan,
S/o S. Venkatesan,
D.No.365, Salem Main Road,
Komarapalayam P.O., Thiruchengode T.K.
Namakkal.

....Appellant/Complainant

Versus

Mr. A.S. Kathiresan

...Respondent/Accused

This Criminal Appeal is filed under Section 378 Code of Criminal Procedure praying to set aside the order dated 18.01.2007 made in C.C.No.322 of 2004 on the file of the Judicial Magistrate, Tiruchengode by allowing this Criminal Appeal.

For Appellant : Mr. R. Marudhachalamurthy

For Respondent : No Appearance

JUDGMENT

This appeal arises against the order of acquittal dated 18.01.2007 made in C.C.No.322 of 2004 on the file of the Judicial Magistrate, Tiruchengode.

2. Petitioner/Complainant moved prosecution informing that respondent/accused borrowed a sum of Rs.1,50,000/- from the complainant and a cheque bearing No.048846 dated 24.09.2003 for Rs.25,000/- drawn on Canara Bank, Perumanallur Branch stood issued to him by respondent towards repayment of borrowing, which upon presentation was returned unpaid for the reason "insufficient funds". Petitioner/Complainant caused statutory notice and following the procedure envisaged under Section 138 of the Negotiable Instruments Act, a complaint has been filed. Such complaint has been dismissed and the accused is acquitted u/s.256 Cr.P.C. Hence, this appeal.

3. Heard learned counsel for appellant. There is no appearance for respondent.

4. A perusal of records reveals that Court below has erred in dismissing the complaint merely recording that complainant was absent, accused was present and C.W.1 was examined. The records do not reveal any continuous unjustified absence of the complainant as would warrant dismissal. In the result, this Criminal Appeal is allowed. The order of acquittal dated 18.01.2007 made in C.C.No.322 of 2004 on the file of the Judicial Magistrate, Tiruchengode is set aside. Court below is directed to take the complaint on file and proceed further in accordance with law.

31.07.2017

mrr

Speaking Order (or) Non-Speaking Order

Index : Yes/No

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C.T. Selvam, J.,

mrr

To

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



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