

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.413 of 2016

Oceanic Bio Harvest Limited,
Represented by Mr.A.Arul Renold,
Executive, Human Resources Department,
No.6, First Floor,
Wellington Estate Complex,
No.53, Ethiraj Salai,
Egmore, Chennai - 600 008.

... Appellant

versus

S.P.Jeyaraj

... Respondent

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the order dated 08.10.2015 passed in C.C.No.1110 of 2013 on the file of the learned Metropolitan Magistrate (Fast Track Court No.II), Egmore, Chennai and allow the Criminal Appeal.

For Appellant : Mr.R.Thirugnanam

For Respondent : Mr.K.P.Anantha Krishnan

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J U D G M E N T

The complainant in C.C.No.1110 of 2013 on the file of the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai, is the appellant herein. This appeal is directed against the order of dismissal.

2. The complainant has filed the complaint for the offence under Section 138 of the Negotiable Instruments Act. The complainant has alleged in the complaint that the respondent, in order to discharge his liability to the tune of Rs.2,32,481/-, issued the cheque in question. The cheque when presented for encashment was dishonoured for the reason "funds insufficient" in the account of the respondent. Thereafter, the complainant issued a legal notice dated 18.01.2013 calling upon the respondent to pay the amount covered by the cheque. It is further alleged in the complaint that the respondent refused to receive the legal notice. As there was no payment, complaint was filed by the complainant on 08.03.2013. The complainant company was represented by its Executive.

3. The complaint was taken on file by the learned Metropolitan Magistrate [Fast Track Court No.II], Egmore, Chennai in C.C.No.1110 of 2013. The respondent entered appearance and pleaded not guilty.

4. The complaint was dismissed for non-appearance for the complainant in terms of Section 256 Cr.P.C. and the accused was acquitted. The acquittal was not on merits. Challenging the order of acquittal, the appellant filed the present appeal after obtaining leave.

5. It is seen from the records that in support of the case, the complainant, its Assistant Manager was examined as P.W.1 on 06.08.2014. P.W.1 was not cross examined. Prosecution evidence was closed and the case was adjourned to 05.09.2014 for examination of the accused/respondent under Section 313 Cr.P.C. On 05.09.2014, the accused did not appear. Hence, the case was adjourned to 15.11.2014. On 15.11.2014, the accused was examined under Section 313 Cr.P.C. and the case was adjourned to 31.12.2014 for the defence evidence. Thereafter, the case has been periodically adjourned and the defence evidence was closed on 25.05.2015.

6. On 25.06.2015, a petition under Section 311 Cr.P.C. was filed to recall P.W.1. It was allowed on 24.08.2015. The case was adjourned to 09.09.2015 for cross examination of P.W.1. On 09.09.2015, petition under Section 256 Cr.P.C was filed and allowed and the matter was adjourned to 08.10.2015. The Magistrate indicated "no further adjournment". However, on 08.10.2015, the impugned order was passed in the docket.

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"Comp abt. No rep. Acd abt. 317 CrPC PFA. Today, this case is posted for app of PW1 and cross examination of P.W1. PW1 failed to appear and hence this complaint is dismissed u/s 256(1) CrPC and accused is acquitted."

7. The learned counsel appearing for the appellant would submit that the witness [P.W.1] and the advocate of the complainant could not appear before the Court at the time of calling work, in the early hours of the day since they were struck in traffic jam and that, therefore the Magistrate was not justified in dismissing the case, at the time of calling, in the early hours.

8. The learned counsel appearing for the respondent would submit that as the appellant company and their counsel were informed on 09.09.2015 by the Court that “no further adjournment” would be granted, the Trial Court was justified in dismissing the complaint for non-appearance. He has also pointed out that the leave to file an appeal has also been filed with a delay of 29 days and that, therefore the complainant was not diligent in prosecuting the case.

9. The delay in filing the grant leave petition was condoned by this Court. On 09.09.2015, the absence of the complainant was condoned by the Trial Court. The powers given under Section 256 Cr.P.C. must be exercised reasonably. In the case at hand, P.W.1 was examined-in-chief on 06.08.2014. The respondent has not chosen to cross examine on the said date. Petition to recall P.W.1 was filed after the closure of evidence for defence and the case was posted for arguments.

10. The accused cannot be acquitted on the ground for non-appearance of the complainant, as prior to the dismissal the complainant has been regular in appearance before the Court. There is nothing on record to indicate that there was negligence or deliberate inaction on the part of the complainant in prosecuting the case. In the case at hand, as already noticed, documents [Ex.P.1 to Ex.P.5] have already been marked on the side of the complainant. Therefore, the Trial Court in my considered view, was not justified in dismissing the complaint for non-appearance. Hence, the impugned order is liable to be set aside. Accordingly, the order dated 08.10.2015 passed in C.C.No.1110 of 2013 is set aside and the matter is remitted to the Trial Court. The learned Metropolitan Magistrate [Fast Track Court No.II], Egmore, Chennai, is directed to proceed with C.C.No.1110 of 2003 in accordance with law. The Trial Court is directed to issue notice to the parties for their appearance and proceed with the case thereafter.

11. With the above direction, the Criminal Appeal is allowed in part.

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Index : Yes/No
Internet : Yes

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N.AUTHINATHAN, J.,

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To

1.The Metropolitan Magistrate
[Fast Track Court No.II],
Egmore, Chennai - 600 008.

2.The Public Prosecutor,
High Court of Madras,
Chennai.



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