

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.789 of 2016

C.T.Sethu Raja

... Appellant

versus

T.G.Manikandan

... Respondent

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, against the judgment dated 24.06.2016 passed in C.C.No.511 of 2007, on the file of the learned Judicial Magistrate No.I, Mannargudi, Thiruvarur District.

For Appellant : Mr.Swami Subramanian

For Respondent : Mr.S.P.Yuvaraj

J U D G M E N T

The appellant is the complainant in C.C.No.511 of 2007 on the file of the Judicial Magistrate No.I, Mannargudi, Thiruvarur District. The complaint has been filed under Section 200 Cr.P.C. for the offence under Section 138 of the Negotiable Instruments Act. It appears that initially the complaint was filed by the father of the appellant. During the pendency of the case, he died and the appellant has come on record in the place of his father.

2. It is seen from the judgment of the Trial Court that on account of the non-appearance of the accused a Non-Bailable Warrant was issued. However, the Trial Court pointed out that the fee has not been paid for the execution of the warrant despite three opportunities. The complaint was dismissed on 24.06.2016 under Section 204 (4) Cr.P.C. The Magistrate has also invoked Section 256(1) Cr.P.C. and acquitted the accused. Aggrieved by the judgment of acquittal, the present Appeal has been preferred.

3. The Trial Court has relied on the common judgment of this Court in CrI.A.Nos.560 and 567 of 2014 [I.S.ASHOK KUMAR vs. B.C.RAMAN and another] dated 18.02.2015 wherein it has been noticed that the complainant therein failed to appear before the Court despite 13 opportunities. In the present case, the complainant was absent for only one hearing i.e. on 24.06.2016. The learned counsel appearing for the appellant would submit

that the advocate, who appeared for the appellant in the Trial Court failed to inform the date of hearing to the appellant herein and that, therefore, the appellant was unable to appear on the said date and his absence was neither wilful nor wanton.

4. The learned counsel appearing for the respondent supported the judgment of the Trial Court and he has pointed out that the appellant has not been diligent in prosecuting the case.

5. It is seen from the impugned order that the Magistrate has invoked Sections 204 (4) and 256 Cr.P.C. It is not the case that the case was posted to 24.06.2016 for the appearance of the accused or the said date was fixed for hearing of the case. A close reading of Section 256 Cr.P.C. would make it clear that the Magistrate can exercise its power if the complainant does not appear on the day appointed for the appearance of the accused or on a date fixed for hearing of the case. In the case at hand, hearing date was not fixed and 24.06.2016 was not the day appointed for the appearance of the accused. In these circumstances and having regard to the explanation offered by the appellant, I am of the considered view that the Magistrate was not justified in acquitting the accused by invoking Section 256 Cr.P.C. The order is therefore is liable to be set aside.

6. In the result, the appeal is allowed and the judgment dated 24.06.2016 is set aside and the matter is remitted to the Court below for further steps in accordance with law. The parties are directed to appear before the Court below on 21.08.2017.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sri

To

1.The Judicial Magistrate No.I,
Mannargudi, Thiruvavur District.

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

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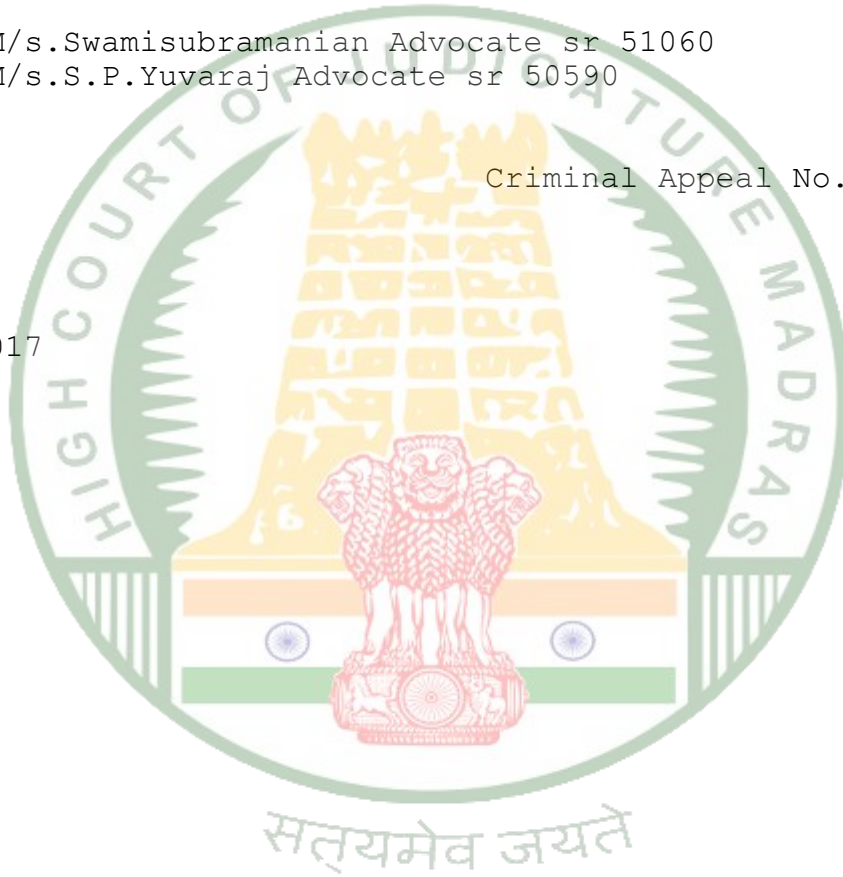
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4.T.G.Manikandan
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Thiruvarur District

+1 cc to M/s.Swamisubramanian Advocate sr 51060
+1 cc to M/s.S.P.Yuvaraj Advocate sr 50590

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