

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date :14.03.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Criminal Appeal No.486 of 2017

Vijaya Sadharsan

.. Appellant/Complainant

Versus

1.Subhadra @ Leela Kumari
2.Bharathi
3.Ramya
4.Venkat Rao
5.Santhosh Kumar

..
Respondent/Accused

Criminal Appeal filed under Section 378 of Criminal Procedure Code, against the judgment dated 20.04.2017 in C.C.No.6270 of 2010 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and to set aside the same.

For Appellant : Mr.L.Siddiq

JUDGEMENT

This Criminal Appeal has been preferred against the order passed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai- 600 015 in C.C.No.6270 of 2010, dated 20.04.2017.

2.It is the case of the appellant that the appellant had made a private complaint under Section 200 of the Code of Criminal Procedure against the respondent/accused for the alleged offence punishable under Section 420, 406 of IPC read with Sections 468, 471 of IPC. The Trial Court, after taking the complaint on file had issued summons to the respondent/accused. On 20.04.2017, when the case was called, no one was present on the complainant's side and no petition to that effect was filed. Hence, the learned Judge had dismissed the complaint. Against the said order, the present appeal has been filed.

3. Heard Mr.L.Siddiq, learned counsel appearing for the appellant. Though notice by way of substitute service having been effected against the respondents and their names with full address had been printed in the cause list, when the case is called today, no one is appearing for the respondents.

4. I have perused the impugned order of the learned Judge dated 20.04.2017.

5. The learned Judge has recorded that though final notice dated 16.03.2017 was issued and the same had been received and acknowledged by the complainant, there was no representation on his behalf and no petition in fact had also been filed by the complainant's side to dispense with his presence on the particular day. The learned Judge has also recorded that the case is pending from 2010 and inspite of sufficient opportunities given to the complainant, no progress in the case has been shown therefore, the learned Judge has recorded stating that the Court was not inclined to adjourn the case and therefore, the learned Judge has dismissed the complaint for non-appearance of the complainant.

6. In case of the complainant's absence and no petition is filed on his behalf to dispense with his presence with an acceptable reason, that too after receipt of final notice, the Magistrate is empowered to invoke the provisions of Section 256 of the Code of Criminal Procedure and thereby the complaint can be dismissed and the accused can be acquitted.

7. Here in case in hand though the learned Judge in view of the non-appearance on the part of the complainant has invoked the provisions of Section 256 of the Code and dismissed the complaint, has not acquitted the accused.

8. Under Section 256 of the Code, it is mandatory on the part of the Magistrate to invoke the said provision to act in the manner as has been stated in the said provision. As per Section 256 of the Code, once the summons had been issued on the complainant and on the date pointed out in the appearance or any day subsequent thereto, if the complainant does not appear, the Magistrate shall acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case to some other day.

9. If the language used in Section 256 of the Code is taken into account, the Magistrate is empowered to dismiss the complaint provided, if the complainant does not appear, however, while dismissing the complaint, the Magistrate shall acquit the accused. Here in the case in hand, through the impugned order, though the learned Magistrate has dismissed the complaint by

invoking the said provisions i.e., Section 256 of the Code, has not acquitted the accused, which is a mandatory requirement to be complied with while passing order invoking Section 256 of the Code.

10. In absence of such non-compliance of the provisions of Section 256 of Code giving a clear acquittal to the accused, giving the benefit of non-appearance on the part of the complainant side, cannot be construed as an order within the meaning of Section 256 of Code.

11. In such view of the matter, this Court is inclined to interfere with the said impugned order and accordingly, the impugned order dated 20.04.2017 passed by the learned Magistrate is set aside. The matter is remitted back to the learned Magistrate with a direction that summons to be issued to both complainant and the accused by fixing a date of hearing, on the date of hearing if the complainant, on receipt of summons does not appear, it is open to the Magistrate to invoke Section 256 of the Code towards dismissing the complaint and acquit the accused as contemplated under Section 256 of the Code.

12. With this direction, the appeal is allowed as indicated above.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The XVIII Metropolitan Magistrate,
Saidapet, Chennai

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.A.Muthulakan, Advocate, S.R.No.19638

Cr1. A.No.486 of 2017

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