

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2018

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Criminal Appeal No.497 of 2017

S.Nanthakumar

... Appellant/Complainant

Versus

G.Manoharan

... Respondent/Accused

Criminal Appeal filed under Section 378(4) of Criminal Procedure Code, to set aside the order passed in C.C.No.1455 of 2012, dt.28.6.2016 on the file of the learned Metropolitan Magistrate (Fast Track Court-I), Allikulam, Chennai-3 and remit back the matter to the trial court for fresh disposal on merits.

For Appellant : Mr.C.V. Kumar,
For Respondent : Mr.R.Natarajan

O R D E R

This Criminal Appeal has been preferred against the order passed by the learned Metropolitan Magistrate (Fast Track Court-I), Allikulam, Chennai, in C.C.No.1455 of 2012, dated 28.06.2016.

2. The appellant being the complainant had set the law in motion by filing a private complaint against the respondent/accused for the alleged offence punishable under Section 138 of the Negotiable Instruments Act.

3. After taking on file in C.C.No.1455 of 2012, summons had been issued to the respondent/accused. It seems that in spite of the summons having been issued, he did not appear. Therefore, a bailable warrant had been issued against the respondent/accused and the same is pending execution from the year 2013.

4. In the meanwhile, when the case was called for hearing on 24.08.2016, the complainant also was absent and no one was representing him and therefore, by invoking the provisions of Section 256 of Cr.P.C. read with 204(4) of the Code, the learned Magistrate has dismissed the complaint and thus, acquitted the accused.

5. Aggrieved over the said order of the learned Magistrate dated 24.08.2016, the present appeal has been filed.

6. I have heard Mr.C.V.Kumar, learned counsel for the appellant and Mr.R.Natarajan, learned counsel for the respondent.

7. Learned counsel for the appellant by relying upon a separate affidavit filed by the appellant stated that in the earlier hearings, either the appellant or his counsel was representing promptly the case before the trial court and whenever the appellant was absent, a petition under Section 256 of the Code was filed on his behalf, by his counsel. Insofar as the hearing date i.e., 28.06.2016 is concerned, since the appellant has been suffering from viral fever, he had already informed to his counsel that on the said date i.e., on 28.06.2016, he would not be in a position to come before the court and therefore, he had instructed his counsel to file a petition under Section 256 of the Code. However, only after sometime, he came to know that his counsel did not appear on that date i.e., on 28.06.2016, due to advocates' boycott and that is the reason, on behalf of the complainant either the complainant nor his counsel was present before the Trial Court and accordingly, the learned Magistrate by invoking Section 256 of the Code has dismissed the complaint.

8. Learned counsel appearing for the appellant would also submit that, even though bailable warrant is pending against the respondent/accused, it can be noted that every time, for the past more than three years, during the pendency of the bailable warrant against the respondent/accused, the appellant had been pursuing the case by regularly appearing either by himself or through Pleader before the court below and therefore, because of the non-appearance on one day, the present impugned order has been passed and the said order may be interfered with.

9. Per contra, learned counsel for the respondent would submit that, whenever there is a complaint filed and it is posted for hearing, after issuance of summons to both sides on a particular date, it is the duty of the complainant to appear before the court and if any inevitable reason is available for the complainant for his absence, necessary petition has to be filed before the Trial court. In this case, admittedly, neither the complainant appeared before the trial Court nor his counsel appeared and no petition has been filed and therefore, the learned Magistrate has rightly invoked Section 256 of the Code and has dismissed the complaint. Hence, such finding requires no interference from this court.

10. I have considered the submissions of both the learned counsel and also perused the materials placed before this Court.

11. When the complainant is absent in spite of the summons having been issued and a date fixed for hearing, the learned Magistrate has power to invoke Section 256(i) of the Code and dismiss the petition and acquit the accused. Though such a course of action has been taken by the learned Magistrate, in this case, it seems that on the date of hearing as claimed by the appellant, there was advocates strike and therefore, he claimed that he could not appear because of his health condition and his counsel also seems to have not appeared before the Court because of Advocates' boycott. Therefore, the reasons for not appearing on a particular date by the appellant, cannot be attributed to the appellant herein and therefore, the order which is impugned herein can be interfered with. In view of the same, the impugned order made in C.C.No.1455 of 2012 on the file of the Metropolitan Magistrate (Fast Track Court-I), Allikulam, Chennai, dated 28.06.2016 is hereby set aside by remitting the matter to the trial court, with a direction that the trial court shall issue summons to both sides by fixing a date and on their appearance, the learned Magistrate can proceed with the case.

12. It is made clear that inspite of the summons issued for the appearance of both parties and after receipt of the same, if the complainant becomes absent without any plausible or acceptable reason on any hearing date, it is open to the learned Magistrate to take a decision, including the one under Section 256(i) of the Code.

With these observations, this appeal is allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

smi

To

1. The Metropolitan Magistrate
(Fast Track Court-I),
Allikulam, Chennai.

2. -do- Thro' Chief Metropolitan Magistrate, Chennai.

+ 1 cc to Mr.C.V. Kumar, Advocate Sr.12572

CrI. A. No.497 of 2017

KJI (CO)
EU(22/03/2018)