

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.01.2018
CORAM
THE HON'BLE MR. JUSTICE R.SURESH KUMAR
Crl.A.No.601 of 2017

P.Rajkumar ...Petitioner/Complainant
Vs.
Sundari ...Respondent/Respondent

Prayer:- This Criminal Appeal is filed under Section 378 of Cr.P.C., to set aside the dismissal order passed by the learned Judicial Magistrate I, Tindivanam on 12.01.2017 under Section 256 of Cr.P.C. in C.C.No.247 of 2016 and restore the same into the file of the learned Judicial Magistrate Court I, Tindivanam.

For Petitioner : Mr.A.M.Ilango

For Respondent : Mr.M.Samuel Raja

JUDGEMENT

This appeal has been filed against the order passed under Section 256 of Cr.P.C. in C.C.No.247 of 2016 by the learned Judicial Magistrate No.1, Tindivanam by his order dated 12.01.2017.

2. Heard Mr.A.M.Ilango, learned counsel appearing for the appellant and Mr.M.Samuel Raja, learned counsel appearing for the respondent.

3. The order which is impugned herein is the order passed by the learned Magistrate in a private complaint filed under Section 138 of Negotiable Instruments Act. According to the impugned order dated 12.01.2017, it discloses that on the said date when the case was called for hearing, the accused was absent and the petition filed on behalf of the accused is allowed. The complainant was also absent and there was no representation for the complainant till 5.25 pm. Therefore, the learned Magistrate stating that since the case was posted on the particular dated i.e, 12.01.2017 for trial, the complaint was absent and there was no representation, the absent cannot be condoned and therefore, the case was dismissed under Section 256 of Cr.P.C. Except this nothing had been stated in the impugned order.

4. In this regard, this Court likes to extract Section 256 of the Code, which reads as follows :-

"256. Non-appearance or death of complainant :- (i) If the summons has been issued on complain, and on the day appointed for the appearance of the accused, or any day subsequently thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything herein before contained, acquit the accused, unless for some reason he things it proper to adjourn the hearing of the case to some other day.

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death."

5. According to the aforesaid provision on a particular day, if the complainant absent, the Magistrate shall notwithstanding anything contained, acquit the accused unless for some reasons he thinks it proper to adjourn the hearing of the case to some other day. Here, the case in hand, the complainant is absent on the date and if any one representing him, the learned Magistrate would have adjourned the matter. However, the learned Magistrate, through impugned order, has dismissed the complaint. It is settled proposition of law, where there is a criminal case pending, the same cannot be dismissed on default clause and the same shall be disposed of by giving acquittal to the accused. This has been specifically mentioned even under Section 256 of the Code. The language used therein with the words "Magistrate shall notwithstanding anything herein before contained, acquit the accused" shall be strictly followed.

6. On perusal of the impugned order herein the Magistrate, though has stated that the petition is dismissed under Section 256 of Cr.P.C., he does not say anything about the acquittal of the accused and this kind of cryptic order cannot be construed as an order in consonance with Section 256 of the Code.

7. On that ground, this Court inclined to interfere with the order impugned. Accordingly, the impugned order is set aside and the matter is remitted back to the learned Judicial

Magistrate I, Tindivanam, for taking the same on file and after issuing the summons, if the complainant is absent and not proceeding with the case once again, then the learned Magistrate may pass orders, of course, invoking Section 256 of the Code by giving acquittal to the accused and give quietus to the complaint.

8. With these directions, the appeal is disposed of.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rts

To

1.The Judicial Magistrate I,
Tindivanam

2.Do-The Chief Judicial Magistrate, Villupuram District

+1cc to Mr.M.Samuel Raja, Advocate SR.no.3227

+3cc to M/s.M.Vijayalakshmi, Advocate Sr.No.3031

Copy to:The Section Officer,
Criminal Section,
High Court, Madras 104.

SV(CO)
sm:13.3.2018

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Cr1.A.No.601 of 2017

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