

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2018

CORAM

THE HON'BLE MR.JUSTICE PONGIAPPAN

Criminal Appeal No.572 of 2011

R. Krishnagopalan

..Appellant/Complainant

Vs.

G. Arul Prakasam

.. Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure against the judgment of the learned Judicial Magistrate No.1, Panruti in C.M.P.No.4752 of 2010 by its judgment dated 14.06.2011, acquitting the accused for the offence under Section 138 of the Negotiable Instrument Act, under Section of Cr.PC.

For Appellant/Complainant : Mr.C.D. Johnson

For Respondent/Accused : Mr.D.S. Thirumavalavan

J U D G M E N T

This appeal is directed against the order passed by the learned Judicial Magistrate No.1, Panruti, dated 14.06.2011, in C.M.P.No.4752 of 2010, acquitting the respondent/accused of the offence under Section 138 of the Negotiable Instruments Act.

2. Heard the learned counsel for the petitioner.

3. The appellant herein had filed a private complaint as against the respondent herein stating that he had committed an offence under Section 138 of the Negotiable Instruments Act and since there was a delay of 316 days in preferring the said complaint, the appellant filed C.M.P.No.4752 of 2010 before the learned Judicial Magistrate No.1, Panruti, to condone the said delay. When the petition in the above C.M.P. came up for hearing before the Trial Court, finding that there was no

representation on behalf of the appellant/petitioner, the learned Trial Judge dismissed the complaint itself under Section 256 of the Code of Criminal Procedure and acquitted the respondent/accused. Aggrieved by the said order, the present appeal has been preferred.

4. On a perusal of the order under challenge, it is seen that the learned Trial Judge has committed an error by acquitting the accused, which has to be necessarily rectified. Without taking cognizance of the offence committed, the acquittal of the accused, at the condonation of delay stage, for non-representation on behalf of the appellant/petitioner, cannot be sustained.

5. Hence, the order passed by the learned Judicial Magistrate No.1, Panruti in C.M.P.No.4752 of 2010 is set aside and the matter is remanded back to the Trial Court, for fresh consideration. The learned Trial Judge is directed to dispose of C.M.P.No.4752 of 2010 within a period of one month from the date of receipt of a copy of this order, after giving an opportunity to the appellant. The Criminal Appeal is allowed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.1,
Panruti.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.D.S.Thirumavalavan, Advocate, S.R.No.

+1cc to Mr.C.D.Johnson, Advocate, S.R.No.38864

CrI.A.No. 572 of 2011

NA(CO)
GSP(03/07/2018)