



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Criminal Appeal No.12 of 2015

M/s.Chandan Finance Corporation,
Rep by its Manager &
Power of Attorney Holder
D.Narendra Kumar Bothra
Having Office at
No.9, Basin Water Works Street,
Sowcarpet,
Chennai - 600 079.

...Appellant/Complainant

Versus

A.Vasanthan

...Respondent/Accused

Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the order passed in C.C.No.1882 of 2011 dated 06.06.2013 on the file of the VIII Metropolitan Magistrate Court, George Town, Chennai and remit that the matter to the trial court for fresh disposal on merits.

For Appellant : Mr.R.Shankar

For Respondent : Mr.V.Purushothaman

JUDGMENT

This Criminal Appeal has been preferred against the order dated 06.06.2013, passed by the VIII Metropolitan Magistrate Court, George Town, Chennai made in C.C.No.1882 of 2011.

2. Heard Mr.R.Shankar, learned counsel appearing for the appellant and Mr.V.Purushothaman, learned counsel appearing for the respondent.

3. It is the case of the appellant that he had filed a private complaint before the learned Magistrate, which was under the trial stage and had been posted for hearing on 07.05.2013 and on that date, since the complainant was absent, a petition was filed and the same was allowed by the learned Magistrate and subsequently, the trial was posted on 27.05.2013. On 27.05.2013, the complainant was present before the trial Court along with his counsel. However, the case was not called and when it was



verified, according to the appellant, it was informed that the case bundle was misplaced and after having the case bundle traced out, the case would be listed and accordingly they would call the case. However, on 06.06.2013, the case was called without any notice or intimation and on that day, the complainant could not be present before the trial Court and the case was dismissed by the learned Magistrate by invoking Section 256(1) Cr.P.C.

4. In this regard, the learned counsel appearing for the appellant would submit that, when subsequent date was given to hear the matter and on that day, the complainant along with his counsel were present and the case was not called because the case bundle was misplaced and it was informed by the Court officials that the case bundle would be traced out and further date will be given. The learned counsel appearing for the appellant would further submit that the date i.e., 06.06.2013, was not intimated to the complainant, as no notice had been given to the complainant that the date of hearing was fixed on 06.06.2013 and thereafter there was no occasion to the complainant to know the date fixed on 06.06.2013 and therefore the absence on 06.06.2013 on the side of the complainant, cannot be treated as intentional absence.

5. The learned counsel appearing for the appellant would also submit that, the learned Judge, in the order impugned, stated that the complainant was continuously absent, hence he had dismissed the complaint and acquitted the accused by invoking Section 256(1) of Crl.P.C., whereas, the learned counsel appearing for the appellant would submit that, even in the previous hearing ie., 07.05.2013, though the complainant was absent, a petition had been filed on his behalf and the same was allowed. Hence the learned Magistrate, ought not to have stated that the complainant was continuously absent.

6. I have heard the learned counsel appearing for the respondent also. He would submit that since the complainant was absent on 07.05.2013 and subsequently on 06.06.2013, and the case was posted for trial, and since the complainant was absent for two hearings, the learned Magistrate has rightly invoked Section 256(1) of Crl.P.C. and accordingly dismissed the complaint and therefore, the order requires no interference from this Court.

7. I have heard both sides and perused the materials placed before this Court.

8. As has been rightly pointed out by the learned counsel appearing for the appellant, in the previous hearing ie., 07.05.2013, though the complainant was absent, a petition was filed to that effect and the same was allowed by the learned



Judge. Though certified copy of the order produced by the learned counsel appearing for the appellant states that the next hearing date was mentioned as 06.06.2013, it is the definite case of the appellant that the original date of hearing was given as 27.05.2013, and based on the A diary extract on that day, the appellant along with his counsel was present but the case was not called as the case bundle, according to the Court staff, has been misplaced and it is the definite case of the appellant that the next date of hearing would be intimated to the appellant. Since the subsequent date i.e, 06.06.2013 has not been intimated, the reason for non appearance on the side of the complainant on 06.06.2013 cannot be attributed on the side of the complainant. Moreover, though the complainant was absent on 07.05.2013, i.e, previous hearing date, a petition was filed for his absence and the same was allowed by the learned Judge. Therefore, the findings of the learned Judge that the complainant was continuously absent, may not be justifiable, as there is no record to show that the complainant had been continuously absent for some hearings without any plausible reasons.

9. For all these reasons and in order to give a chance to the appellant/complainant, this Court is of the view that the impugned order passed by the learned Judge is liable to be interfered with and accordingly, the impugned order is set aside and this appeal is allowed, with a direction to the trial Court to pursue with the said C.C.No.1882 of 2011 by taking the same on file by issuing notice to the complainant as well as the accused intimating the date of hearing. However, it is made clear that once the date of hearing is intimated to the complainant, he along with his counsel must appear before the Court and pursue the case. If any further deviation is noticed by the learned Judge, without any plausible reason, the same can be viewed seriously and the learned Judge may take action in accordance with Crl.P.C.

10. With the above observations and directions, this appeal is allowed.

s/d-
Assistant Registrar (CS IX)

True Copy

Sub-Assistant Registrar

rts



To

1. The VIII Metropolitan Magistrate,
George Town, Chennai

2. Do thro The Chief Metropolitan Magistrate
Chennai.

+2 Ccs to Mr.R. Sankar, advocate sr 9287.

Criminal Appeal No.12 of 2015

VGI (CO)
SP(13/02/2018)