

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Criminal Appeal No.191 of 2015

K.V.Dinesh

.. Appellant/ Complainant

Versus

S.V.Ramanathan

.. Respondent/ Accused

Prayer:Criminal Appeal filed under Section 378(4) of Criminal Procedure Code, to set aside the order dated 10.01.2012 passed in C.C.No.1703 of 2008 by the Learned XVII Metropolitan Magistrate, Saidapet, Chennai and restore the complaint in C.C.No.1703 of 2008 to file and to order for the disposal of the same on merits.

For Respondent: Mr.A.M.Loganathan

J U D G M E N T

This Criminal Appeal has been filed against the order passed by the Learned XVII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.1703 of 2008 dated 10.01.2012.

2. The appellant herein was the complainant before the trial Court who filed the complaint under Section 190 of the Criminal Procedure Code, read with Section 138 of the Negotiable Instruments Act. The said complaint has been taken on file in C.C.No.1703 of 2008 and it seems that it has been posted for hearing.

3. However, since no one was present on behalf of the complainant before the trial Court, the learned Judge has issued a final notice dated 21.12.2011, requiring the presence of the complainant to proceed further with the complaint.

4. However, during the next hearing date (i.e) 10.01.2012, when the case was called again, the complainant was absent and the learned counsel on record was also absent on the part of the complainant. Therefore, the learned Judge dismissed the complaint by invoking the provisions of Section 256(1) of the Code. As against the said order, the present Criminal Appeal has been filed.

5. Heard, Mr.A.M.Loganathan, learned counsel representing the respondent. When the case was called today, no one was representing for the appellant. However, since the issue raised is of a very narrow campus, this Court is inclined to dismiss the Appeal on merits.

6. As per the Procedure contemplated under Section 256 of the Code of Criminal Procedure, if the summons has been issued on the complainant, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned and if the complainant does not appear, the Magistrate is empowered to dispose the Case by acquitting the accused, unless for a proper reason which the Magistrate thinks it proper to adjourn the hearing of the case to some other day.

7. In the case in hand, though the complainant was absent, a final notice was issued on 21.12.2011, fixing the hearing date on 10.01.2012. However, on the said date, neither the complainant nor his counsel seems to have appeared before the trial Court and further the learned Judge having no other option except to invoke Section 256(1) of the Code, has invoked the said provision and dismissed the complaint.

8. On perusal of the said impugned order and judgment dated 10.01.2012, it discloses that, though the learned Judge has invoked 256(1) of the Code, has only dismissed the complaint but the accused has not been acquitted, explicating in the said order. The language used in Section 256(1) of the Code, clearly emphasis that, in case, on the date of hearing, after issuance of summons for the complainant, if the complainant does not appear, the Magistrate shall acquit the accused. Therefore, once Section 256(1) of the Code is invoked by the Magistrate for non-appearance of the complainant on the date of hearing, then, it is the duty of the Magistrate to dispose the complaint by acquitting the accused.

9. Here in the case in hand, though Section 256(1) of the Code was invoked, the learned Judge had simply dismissed the complaint. However, the learned Judge has not acquitted the accused. Therefore, this order impugned is not in consonance with the mandatory provision of Section 256(1) of the Code. Therefore, this Court is of the firm view that the impugned order is liable to be interfered with.

10. Accordingly, the impugned order and judgment dated 10.01.2012 as made in CC.No.1703 of 2008 on the file of the XVII Metropolitan Magistrate Saidapet, Chennai 15 is hereby set aside and the matter is remitted back to the trial Court, and the trial Court is directed to issue summons to both the

complainant as well as to the accused afresh, fixing the date of hearing and in the said hearing, if the complainant does not appear, it is open to the learned Magistrate to invoke Section 256(1) of the Code towards the acquittal of the accused.

11. With these directions and observations, this Criminal Appeal is Allowed.

Sd/-

Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

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To

1. The Learned XVII Metropolitan Magistrate,
Saidapet, Chennai
2. The Principal Sessions Judge,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.A.M.Logananathan, Advocate SR.No.4972

CrI.A.No.191 of 2015

KGK (CO)
GN(23/03/2018)

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