IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2018

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Criminal Appeal No.739 of 2015

K.Selvaraj .. Appellant/Complainant

Versus

R.Parasuraman .. Respondent/Accused

Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the judgement of acquittal passed in C.C.No.3398 of 2010, dated 15/09/2015 on the file of the learned Metropolitan Magistrate (Fast Track Court-I), Allikulam, Chennai.

For Appellant : Mr.M.Selvam

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.3398 of 2010, dated 15.09.2015.

2. The appellant seems to have filed a private complaint under Section 200 of the Code of Criminal Procedure against the respondent for the alleged offence punishable under Section 138 of the Negotiable Instruments Act. The said complaint was taken on file in C.C.No.3390 of 2010 by the learned Magistrate. According to the order which is assailed herein, the learned Judge has stated that on 15.09.2015, when the case was called, the complainant was absent and there was no representation on his behalf. Even though final notice was already given to the complainant and even after issuance of notice, the complainant was absent for several hearings. The learned Judge has also recorded that even after sufficient opportunities were given to the complainant, he had miserably failed to attend the court. He has further stated in the order that this attitude on the part of the complainant would show that he is not interested in proceeding the case and therefore, there is no bonafide on his part and to keep this matter pending. Accordingly, the Office Assistant of the Court was examined as Court witnesses (C.W.9) and therefore, the learned Judge invoking Section 256 of the Code has dismissed the complaint and acquitted the accused.

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3. In order to meet such eventuality where the complainant even after issuance of summons to both sides, has been in absence, without even any acceptable reason and without any petition to that effect to dispense with the presence of the complainant by his pleader, then it is for the concerned Judge to invoke Section 256 of Cr.P.C., which reads thus:

> "256. Non-appearance or death of complainant - (1) If the summons has been issued on complaint and on the day appointed for the appearance of the accused, or any day subsequent 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 thinks 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 nonappearance of the complainant is due to his death.

4. The aforementioned Section 256 of the Code mandates and empowers the Magistrate that if the summons had been issued on the complainant and on the date of hearing pointed out, if the complainant does not appear, the Magistrate shall notwithstanding anything contained therein, can acquit the accused, unless for some reason he thinks it appropriate and adjourn the hearing of the case to some other date.

5. Therefore, Section 256(i) enjoins that it is the power and discretion of the Magistrate to decide that if no appropriate reason is available to adjourn the hearing to some other day, he can dismiss the complaint, if the complainant is absent after the summons is issued and no petition for condoning his absence is also filed by his pleader. Such a course of action to be decided in order to meet such circumstances since has been mandated under Section 256 of the Code as extracted above, this Court cannot find fault with the action on the part of the Magistrate concerned, who passed the impugned order herein whereby, he has dismissed the complaint and acquitted the accused, by recording his reasons that the complainant had been continuously absent for several hearings. Therefore, the said order, which is impugned herein requires no interference from this Court.

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6. Accordingly, the same is sustained and hence, this Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Public Prosecutor,
High Court, Madras.

Crl. A. No.739 of 2015

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