



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Cr1.A.No.81 of 2015

C.Saravanan

... Appellant/Complainant

Vs.

R.N.Duraisamy

... Respondent/Accused

Prayer:

Criminal Appeal is filed under Section 378(4) of the Code of Criminal Procedure to set aside the order dated 28.11.2013 passed in S.T.C.No.561 of 2012 by the learned Judicial Magistrate (Fast Track Court No.I), Erode.

For Appellant : Mr.S.Silambu Selvan

For Respondent : Mr.Satish Parasaran

JUDGMENT

This appeal has been preferred against the order passed by the learned Judicial Magistrate (Fast Track Court No-I), Erode, vide order dated 28.11.2013 in S.T.C.No.561 of 2012.

2.The case of the appellant is that, he had made a complaint under Sections 138 and 142 of the Negotiable Instruments Act read with Section 200 of the Code of Criminal Procedure before the trial Court against the respondent/ accused. The said complaint was taken on file and it was numbered as S.T.C.No.1486 of 2012 on the file of the learned Judicial Magistrate No.I, Erode. After taking Sworn Statement, S.T.C.No.1486 of 2012 was re-numbered as S.T.C.No.561 of 2012 and thereafter, it was transferred to the Fast Track Court, Erode, where the appellant was directed to appear on 07.11.2012.

3.It is the further case of the appellant that, subsequent to the transfer of case to the Fast Track Court No.I, Erode, due to inevitable circumstances, as the appellant suffered a loss in his business, he had closed his Textile business and he has shifted all his activities to the address given. However, it seems that Fast Track Court No.I, Erode, had sent notices twice to the erstwhile address. Since the appellant already left



by closing his business from that address, he could not receive the summons and therefore, he could not appear before the learned Magistrate on the said two occasions. Therefore, because of his absence on the said dates, the learned Magistrate has dismissed the appeal on 28.11.2013 by invoking Section 256 of CrPC and acquitted the respondent/accused.

4.I have heard Mr.S.Silambu Selvan, learned counsel appearing for the appellant and Mr.Satish Prasaran, learned counsel appearing for the respondent.

5.The learned counsel appearing for the appellant has filed an affidavit of the appellant, wherein at Paras 2 to 4, the appellant has narrated the abovesaid facts, which are extracted hereunder:

"2.I submit that pursuant to the recording of the Sworn Statement the above case was re-numbered as STC.No.561 of 2012 and was transferred to the Hon'ble Fast Track Court-I, Erode, and I was directed to appear on 07.11.2012.

3.I submit that subsequent to the transfer of case FTC-I, due to inevitable circumstances and loss of my business, I had closed my Textiles and shifted all my activities to my above mentioned residential address. I submit that the Hon'ble Fast Track Court-I, had addressed 2 letters to my earlier business address for my appearance. I submit that those letters were returned as "Left" and hence, the Hon'ble Fast Track Court-I, Erode, had dismissed my case in S.T.C.No.561 of 2012 for default on 28.11.2013.

4.I submit that I was unable to receive the summons from the Court due to the bonafide reason that I had closed the company in the address of "Sairam Textiles", Proprietor, C-85, Sampath Nagar, Erode - 638 011. I submit that since I was unable to receive the Court summons and further I was unable to appear before the Fast Track Court-I, Erode. Hence, my complaint was dismissed."

6.I have heard the learned counsel appearing for the respondent, in this regard.

7.Since the appellant has come forward with some reasons, which are acceptable for his absence on two occasions before the trial Court, inspite of summons had been sent by the trial Court, the appellant has also raised some substantial issue stating that he has got a fair chance of pursuing the private complaint filed before the trial Court successfully and



therefore, he pleads that if one more opportunity is given, bonafidely, he would appear and pursue the case without fail hereafter.

8. Considering the said facts and circumstances of the case and also taking into account the reasons given by the appellant for his absence before the trial Court and also, in order to give one more opportunity to the appellant before the trial Court, this Court is inclined to pass the following orders:

"The impugned order of the learned Judicial Magistrate (Fast Track Court No.I), Erode, dated 28.11.2013 made in S.T.C.No.561 of 2012 is hereby set aside and the matter is remitted to the learned Magistrate, who shall issue summons to both the complainant and the accused, fixing the date of hearing. It is made clear that once summons is issued, on receipt of the same, the appellant/complainant shall appear before the Magistrate Court and pursue the case. If any further absence is noticed from the side of the complainant, it shall be open to the learned Magistrate to take necessary action including dismissal by invoking Section 256 of CrPC."

With these observations, this Criminal Appeal is ordered.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mps
To

1. The Judicial Magistrate,
(Fast Track Court No.I),
Erode.
2. The Section Officer,
Criminal Section,
High Court, Madras-104

+1cc to Mr.S.Silambu Selvan , Advocate, S.R.No.11625
+1cc to Mr.Satish Parasaran, Advocate, S.R.No.12229

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