

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 19.07.2018

JUDGMENT PRONOUNCED ON : 24.07.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.A.Nos.275 to 278 of 2009

Ashok Kumar Bandari
[Through their authorized person],
A.Sakthivelu,
Manager, Capital Credit Corporation,
Deccan House, Old No.16, New No.12,
Kuppusamy Road, Chepet,
Chennai - 600 031. ... Appellant / Complainant
[in all appeals]

versus

K.Sravan Kumar
Ranjani Fashions,
No.19, North Part Street,
Ambattur O.T.,
Chennai - 600 053. ... Respondent / Accused
[in all appeals]

Common Prayer: Criminal Appeals filed under Section 378 of the Code of Criminal Procedure, to set aside the orders dated 18.08.2008 made in C.C.Nos.21, 23, 19, 20 of 2008 respectively on the file of the learned District Munsif-cum-Judicial Magistrate, Ambattur.

For Appellant : Mr.V.Arul
[in all appeals]

For Respondent : Mr.S.Saravanakumar
[in all appeals]

COMMON JUDGMENT

Since the date of offence, the date of complaint and the date of order are one and the same, all the appeals are taken up for hearing jointly and this Court is decided to pronounce a common judgment in these appeals.

2. These Criminal Appeals have been preferred against the orders passed by the learned District Munsif-cum-Judicial Magistrate, Ambattur in C.C.Nos.21, 23, 19, 20 of 2008 respectively dated 18.08.2008.

3. I have heard Mr.V.Arul, learned counsel appearing for the appellant, Mr.S.Saravanakumar, learned counsel appearing for the respondent and also perused the materials placed before this Court.

4. The case of the appellant in all the cases is that, he filed private complaints before the learned District Munsif-cum-Judicial Magistrate, Ambattur, against the respondent / accused alleging that he committed an offence punishable under Section 138 of the Negotiable Instruments Act.

5. In the trial court, inspite of sending notice to the appellant / complainant for his appearance on 18.08.2008, without any reason he had not been appeared before the said court. Even he had not made arrangements in the trial court for condoning his absence. Ultimately, the learned Magistrate dismissed all the complaints for non-appearance of the complainant in terms of Section 256 Cr.P.C. and acquitted the respondent/accused. Challenging the order of acquittal, the appellant is before this Court with the present appeals.

6. The learned counsel appearing for the appellant would contend that due to the suffering of jaundice, the appellant was unable to attend the court on 18.08.2008. Further, he submits that dismissing the complaints for the non-appearance of single occasion is not justifiable. In this regard, he relied on the judgment of this Court in CrI.A.No.150 of 2017 dated 17.03.2017 [C.Senthilkumar vs. N.Senthilkumar].

7. Now, on going through the particulars available in the above said case, it is seen that the complaint relates to the year of 2013. Further, on the date of passing the order, the learned counsel filed an application before the trial court under Section 256 Cr.P.C and prayed to condone the absence of the complainant. But in this case, there is no averment with regard to the filing of an application or atleast made a representation before the said court. So, the findings arrived at by the trial court in the above said case cannot be equated with the case in our hand.

8. Secondly, the learned counsel appearing for the appellant relied on the judgment of this Court in CrI.A.No.482 of 2017 dated 20.03.2018 [A.Kumar vs. R.Anand] wherein it was found that on a day in which the impugned order has been passed, all the advocates are boycotted the Court. So, the factual

situation of the said case is also comparatively differ from the case in our hand.

9. Now, coming to the facts and circumstances of the present case, it appears that the complaints have been filed on behalf of one Capital Credit Corporation and the said Company is situated in Chetpet, Chennai. So, considering the business run by the said Corporation, the authorities responsible for the said company are having the knowledge about the court proceedings.

10. Further, on going through the order passed by the learned Magistrate, it appears that before passing the order of dismissal, notice was sent to the complainant for his appearance. In fact, there is no necessity for sending notice for the appearance of the complainant. But in order to render the real justice, the learned Magistrate issued notice. So, wilfully without any reason the complainant had not appear before the Trial Court on the day of passing dismissal order. Further, on going through the grounds of appeal, nothing was mentioned about the illness sustained by the complainant. So, the said aspect also is contrary to the arguments advanced by the learned counsel appearing for the appellant. If really the complainant sustained any illness, it is very easy for him to get a certificate from the Doctor and enclosed with the appeal memorandum. Therefore, without any document to substantiate the claim made by the appellant, now, the learned counsel praying to set aside the orders passed by the learned Magistrate is baseless. Furthermore, the impugned orders have been passed in the year 2008.

11. In the light of the above discussion, this Court finds that the Criminal Appeals filed by the appellant deserves no merits and accordingly, the same are dismissed. The order of acquittal dated 18.08.2008 passed by the learned District Munsif-cum-Judicial Magistrate, Ambattur, in C.C.Nos.21, 23, 19, 20 of 2008 respectively are hereby confirmed.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

sri

To

1.The District Munsif-cum-Judicial Magistrate,
Ambattur.

2. do Thro The Chief Judicial Magistrate,
Chennai.

3.The Section Officer,
V.R. Section/Crl.Section,
Madras High Court,
Chennai.

+1cc to Mr.Saravana Kumar, Advocate SR.No.49117

+4cc to Mr.D.Surya Narayanan, Advocate SR.No.49496, 49509,
49510, 49511

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AD(CO)
GN(10/08/2018)



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