



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.49 of 2009

WEB COPY

G.Meganathan

... Appellant/Complainant

Vs.

C.P.Madhavan

... Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C., against the order of the learned Judicial Magistrate No.IV, Vellore, dated 08.12.2008 in C.C.No.54 of 2006, dismissing the complaint under Section 256 Cr.P.C. and acquitting the accused from the case.

For Appellant : Mr.V.Balaji

For Respondent : Ms.A.Bakkiya Lakshmi
(Legal Aid Counsel)

JUDGMENT

The complainant in C.C.No.54 of 2006, on the file of the learned Judicial Magistrate No.IV, Vellore, is the appellant herein, challenging the order of acquittal passed by the learned Judicial Magistrate No.IV, Vellore on 08.12.2008, dismissing the complaint and acquitted the accused.

2.It is the case of the appellant is that he has filed the above complaint in C.C.No.54 of 2006 before the learned Judicial Magistrate No.IV, Vellore, for the offence under Section 138 of Negotiable Instruments Act, against the respondent herein.

3.It is the further case of the appellant is that when the matter posted on 08.12.2008 for trial, due to his sudden illness, he was not able to contact his counsel. Hence, he was unable to file a petition for the adjournment on the said date. Therefore, the learned Magistrate has dismissed the complaint under Section 256 of Cr.P.C. and discharged the accused from the said complaint due to non appearance of this appellant, who is the complainant in the said case on 08.12.2008. Challenging the said order, the present appeal has been filed.

4.After issuing notice to the respondent, there was no representation for the respondent, inspite of served notice on the respondent/accused. Therefore, this Court appointed



Ms.A.Bakkiya Lakshmi, Advocate, No.4, Law Chamber, High Court, Chennai-104, as Legal Aid Counsel for the respondent.

5.I heard Mr.V.Balaji, learned counsel for the appellant and Ms.A.Bakkiyalakshmi, learned Legal Aid Counsel for the respondent and perused the entire records.

6.On fair reading of the order passed by the learned Judicial Magistrate No.IV, Vellore on 08.12.2008, it is made clear that the said complaint was dismissed due to non appearance of the complainant and passed orders under Section 256 of Cr.P.C. for dismissing the complaint by acquitting the accused. This Court and the Hon'ble Apex Court has very categorically held that in a criminal case, if the complainant has not appeared, the order should be passed only on merits, but not passed on default. But ignoring the orders passed by this Court and the Hon'ble Apex Court, the learned Magistrate has simply dismissed the complaint on 08.12.2008 that the non appearance of the complainant and his Advocate before the Court below.

7.Therefore, in the interest of justice, for giving one more opportunity to the complainant on the orders passed by the Hon'ble Apex Court, I am inclined to interfere with the orders passed by the learned Judicial Magistrate No.IV, Vellore in C.C.No.54 of 2006, dated 08.12.2008 and the same is liable to be set aside by remand back the matter to the same Court for fresh consideration by issuing summons to both the parties.

8.In the result:

(a) this Criminal Appeal is allowed by setting aside the order passed in C.C.No.54 of 2006, on the file of the learned Judicial Magistrate No.IV, Vellore, dated 08.12.2008, and the matter is remand back to the learned Judicial Magistrate No.IV, Vellore, for fresh consideration on merits;

(b) the learned Judicial Magistrate No.IV, Vellore, is directed to issue notice to both the parties and conduct trial and pass orders within a period of three months from the date of receipt of a copy of this order, without giving any adjournments to either parties;

(c) both the parties particularly, the complainant is directed to appear before the trial Court regularly, without absenting himself for early disposal of the case within the time limit fixed by this Court.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar



To

1.The Judicial Magistrate No.IV,
Vellore.

2.The Chief Judicial Magistrate, Vellore(for information)

3.The Secretary,
The Tamil Nadu State Legal Services Authority,
High Court campus, Chennai-104.

Copy to:The Section Officer,
VR Section, High Court, Madras

+1cc to M/s.A.Bakkiyalakshmi, Advocate Sr.No.20396

SAI (CO)
sm:3.4.2018

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