

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.07.2018

CORAM :

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No. 606 of 2009

C.R.Dharmalingam

.. Appellant

Vs.

C.Sampath

..Respondent

Prayer: Criminal Appeal is filed under Section 374 (2) of the Code of Criminal Procedure, against the order dated 20.08.2009 in C.C.No.202 of 2009 on the file of Judicial Magistrate No.V, Salem

For Appellant : Mr.S.Kalyanaraman

For Respondent :No appearance

JUDGMENT

The appeal is directed against the judgment dated 28.08.2009 passed in C.C.No.202/2009 on the file of Judicial Magistrate, No.V, Salem, in which, the appellant is the complainant.

2. From the materials available, the case of the prosecution is as follows:

The accused/respondent was working as a Teacher at Govt.High School, Komarapalayam, Rasipuram Taluk. The complainant/appellant and accused/respondent are known to each other for the past several years. The accused had borrowed a sum of Rs.1,50,000/- from the complainant on 25.12.2007 and agreed to return the same with interest at the the rate of 12% to the complainant within 6 months. But inspite of repeated demands made by the complainant, the accused had not return the borrowed amount with accrued interest, the accused had evaded to return the same on one pretext or other.

3. Finally, the accused on 19.10.2008 had given a cheque for Rs.1,50,000/- drawn on ICICI Bank Ltd., Shevapet Branch, Salem bearing No.279696 dated 20.10.2008, towards clearing the part payment of amount borrowed, along with an admission letter for the borrowal of Rs.1,50,000/-. The accused has also assured that

he would pay the balance amount within a short period and also requested the complainant to present the cheque for collection on his intimation.

4. On receipt of the intimation from the accused, the complainant had presented the said cheque on 18.12.2008 through the Canara Bank, Main Branch, Fort, Salem -1, but the cheque was returned for the reason as 'insufficient funds'. This was intimated to the complainant by the bank on 19.12.2008 through cheque return memo.

5. On 26.12.2008, the appellant issued a statutory notice to the respondent and the same was received by the respondent on 30.12.2008. Thereafter, the respondent neither paid the cheque amount nor sent any reply notice to the complainant in time.

6. Thus, in the Trial court, the appellant filed a complaint under section 200 Cr.P.C. against the respondent for the offence under Section 138 of the Negotiable Instruments Act. On 20.08.2009, when the case is posted for trial proceedings, the appellant was not present before the Trial Court, hence, the learned Judicial Magistrate, No.V, dismissed the appeal without mentioning any provision and reasons. Moreover, in the order passed by the learned Judicial Magistrate, No.V, Salem nothing has been mentioned with regard to the order of acquittal being ruled against has been dismissed under Section 256 of Cr.P.C. It is the duty of the Magistrate to mention in the order with

regard to the position of the respondent. But in this case, nothing has been mentioned by the learned Judicial Magistrate.

7. Today, when the criminal appeal is listed in the cause list and name of the counsel for the respondent is also printed. But, no body appears for representing the case of the respondent. Learned counsel for the appellant is present.

8. In order to substantiate the claim, the first and foremost contention raised by the learned counsel for the appellant is that the complainant/appellant herein was not properly informed about the date of hearing, so he did not appear on the date on which the case was dismissed by the Lower Court. Further, he submits that the said reason is the only reason for the non-appearance of complainant before the Trial Court and prayed to allow the appeal.

9. This Court considered the submission made by the appellant counsel. However, on going through the facts of the case, though the alleged occurrence had happened in the year of 2009, it is necessary to go with the full trial for rendering the real justice. Hence, being satisfied with the reasons stated

by the learned counsel for the appellant, this Court decided to allow this appeal.

10. Accordingly, the appeal is allowed. The order passed by the learned Judicial Magistrate No.V is set aside. However, since, the case has been pending from the year 2009, it is appropriate to issue some directions to the learned Judicial Magistrate No.V, Salem for disposing the case within a specific period.

11. Consequently, after issuing notice to both parties for their appearance, the learned Judicial Magistrate, No.V, Salem is directed to dispose the C.C.No.202/2009 within a period of 2 months from the date of receipt of a copy of this order and report the same to this Court.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

msv

To

1. The Judicial Magistrate Court, No.V,
Salem.
 2. -do- Thro' The Chief Judicial Magistrate, Salem.
 3. The Public Prosecutor,
High Court, Madras.
 4. The Section Officer, Crl.Section, High Court, Madras.
- + 1 cc to Mr.S. Kalyanaraman, Advocate Sr.42216

(CS-V)
EU(11/08/2018)

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