

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.645 of 2009

M.Prabakaran

.. Appellant/Complainant

Vs

P.Kailasam

.. Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C, praying to set aside the order of the acquittal in S.T.C.No.1074 of 2007 on the file of the District Munsif-cum-Judicial Magistrate, Paramathi, dated 23.07.2009 and restore the same.

For Appellant :Mr.R.Haribabu (Legal Aid Counsel)

For Respondent :Ms.S.Bhuvaneswari
Mr.M.Balasubramanian

J U D G M E N T

Today when the matter is taken up for hearing, there is no representation for the appellant. Documents perused. This appeal is pending from the year 2009. In spite of repeated adjournments, the learned counsel appearing for the appellant has not been present before this Court for representing the case of the appellant. Even after sending the notice, nobody is present before this Court for submitting the case of the appellant. So, this Court has appointed Mr.Hari Babu as legal aid counsel for engaging the case of the appellant.

2. This appeal arises against the judgment in S.T.C.No.1074 of 2007, dated 23.07.2009, on the file of District Munsif cum Judicial Magistrate, Paramathi.

3. The facts of the case is as follows:

The respondent herein received a sum of Rs.70,000/- (Rupees Seventy Thousands only) from the appellant/complainant agreeing to repay the said amount with interest at the rate of 18% per annum. In order to repay the same on 01.10.2007 the respondent issued a post dated cheque dated 18.10.2007 for Rs.70,000/- (Seventy Thousands only) drawn in favour of the complainant bearing No.3430 of Vengarai Primary Agricultural Co-Operative Bank Limited, Vengarai Branch and got back the promissory note.

4. The appellant/complainant believing the representation made by the accused, presented the cheque through his banker for encashment. After presentation of the cheque for collection the same was returned on 23.10.2007 with a banker's endorsement as "funds insufficient". So the appellant has issued a statutory notice dated 15.11.2007 calling upon the accused to make payment of the cheque amount within 15 days from the date of receipt of the same. The said notice was received by the respondent on 07.12.2007. But, in respect of the statutory notice, the accused has not chosen to pay the cheque amount as demanded by the appellant. So, the appellant preferred the complaint before the District Munsif cum Judicial Magistrate, Paramathi under the provision of 138 of Negotiable Instruments Act. In the course of trial proceedings on 23.10.2007, the learned District Munsif cum Judicial Magistrate, Paramathi, dismissed the case and acquitted the accused under Section 256 of Cr.P.C., for the reason that the appellant/complainant is not present on that day. Against the said acquittal order, the present appeal has been raised before this Court for setting aside the order of acquittal as erroneous.

5. On going through the grounds raised by the appellant in this case, he mentioned only due to the illness on 23.07.2009, he was unable to contact the counsel for giving instructions.

6. In this regard, the learned counsel appearing for the respondent argued that the reasons submitted by the appellant for the absence in the trial Court have not been properly substantiated with the relevant medical records. Moreover, after filing this criminal appeal the appellant purposely without any reason not appeared through the counsel.

7. In this regard, he relied upon the judgment of this Court in CrI.A(MD).No.313 of 2011 dated 15.03.2012 before the Madurai Bench of this Court wherein para (9) which is extracted here under:

" 9. Therefore, the order cannot be said to be one passed against law. The 3rd ground alleged is that the Court below failed to see that the complainant was unable to attend the Court on 26.08.2011 due to his sudden illness. It is not the case of the appellant/complainant was in-disposed and he was not in a position to come to the court and a prayer for adjournment of the case to a future date was made. In the absence of any such representation, the appellant/accused cannot expect the Court to imagine that the complainant would have been laid up with illness. Hence, the 1st and 3rd grounds are bound to be rejected as untenable.

8. Considering the observation made by this Court, this court is of the view that the order passed by the trial Judge it appears on the date of passing the order of acquittal, no application was filed by the appellant for continuous absence. So, it is true that without any substantial grievance, the appeal has been preferred and kept pending from 2009 onwards. So, this Court is of the considered opinion that the delay without production of the medical certificates, shows that there shall be no justification on the part of this Court for setting aside order of trial court.

9. This Court finds that there is no illegality or infirmity and perversity in the finding given by the trial Court. When there is a possibility to extend the benefits to the accused, there is no reason to set aside the judgment passed by the trial Court.

10. The Criminal Appeal shall stand dismissed.

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

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To

1. The District Munsif-cum-Judicial Magistrate,
Paramathi.
2. The Record Clerk, Crl Section,
High Court, Madras.

Copy TO

The Secretary
TamilNadu Legal Aid Authority,
High court, Chennai-104.

(The Tamil nadu Legal Aid authority is directed to pay a sum of Rs.1,500/- fees for the Learned Counsel for the appellant)

+1cc to Mr.M.Balasubramanian, Advocate SR.No.36139

CRL.A.645 of 2009

RJ(CO)
GN(13/07/2018)