

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.01.2018

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Crl.A.No.751 of 2009

K.Thirunavukkarasu .. Appellant
Vs.
V.Meenakshi .. Respondent

Prayer :Criminal Appeal filed under Section 378 (4) Cr.P.C., to call for the records in connection with C.C.No.727 of 2005 on the file of the Judicial Magistrate No.II, Salem and set aside the Order passed by the Judicial Magistrate No.II, Salem on 30.09.2009 made in C.C.No.727 of 2005.

For Appellant : Mr.V.Parthiban

For Respondent : No Appearance

JUDGMENT

The respondent has not made her appearance, though her name has been printed in the cause list after service of notice. Heard the learned counsel appearing for the appellant / complainant.

2. This Criminal Appeal is against the order of the learned Judicial Magistrate No.II, Salem made in C.C.No.727 of 2005, dated 30.09.2009, dismissing the complaint filed under Section 256 Cr.P.C, thereby discharging the accused.

3. The learned counsel appearing for the appellant contends that the presence of the appellant / complainant was not required on the date of hearing, as the accused was also absent on that day. Further he was not instructed to appear either through his counsel or by issuance of notice and therefore the order of the learned Judicial Magistrate requires to be set aside.

4. This Court perused the impugned order and the averments made in the grounds of appeal.

5. It is clear from the order that the accused was also absent and his counsel filed petition under Section 317 Cr.P.C. There is also no mention in the order that the appearance of the

complainant was very much required on the date of hearing and the complainant has not made his appearance on that date in spite of specific instructions by the Court.

6. In the absence of such necessity of appearance for the hearing or his non-appearance in spite of specific instructions of the Court, the impugned order of the learned Judicial Magistrate discharging the accused under Section 256 Cr.P.C., for non-appearance of the appellant / complainant is liable to be set aside. Hence, this Criminal Appeal deserves to be allowed.

In fine, this Criminal Appeal is allowed and the order, dated 30.09.2009 of the learned Judicial Magistrate No.II, Salem made in C.C.No.727 of 2005 is set aside. The learned Judicial Magistrate is directed to proceed with the case after giving notice to the accused and dispose of the case on or before 28.03.2018 and report the same to the Registry without fail.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The Judicial Magistrate No.II
Salem.
2. The Public Prosecutor
High Court of Madras.
3. The Section Officer,
Criminal Section,
High Court, Madras
(To watch the report)

+1cc to Mr.V.Parthiban, Advocate, S.R.No.3540

CrI.A.No.751 of 2009

GP(CO)
CS/07/02/18