

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.A.No.743 of 2009

J.Senthil Kumar
S/o.Mr.K.Jayaraman
represented by his Power of
Attorney Mr.K.Arunachalam ... Appellant/Complainant

Vs

R.Patric Andrews Raj ...Respondent/Accused

PRAYER : This Criminal Appeal is filed under Sections 378(4) of Criminal Procedure Code, to set aside the impugned order of dismissal in C.C.No.2403 of 2005 dated 29.04.2009 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and restore the same.

For Appellant : Mr.A.Thirumaran

For Respondent : No appearance

JUDGMENT

This Criminal Appeal is arising out of the Order dated 29.04.2009, passed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.2403 of 2005, thereby dismissing the complaint for non prosecution.

2. The learned counsel for the appellant would submit that the complaint filed under Section 138 of Negotiable Instruments Act against the accused. The accused borrowed a sum of Rs.17,00,000/- (Rupees Seventeen Lakhs) during the period from 25.04.2002 to 02.04.2003 and duly acknowledged the debt by his letter dated 02.04.2003. The accused issued two cheques for a sum of Rs.7,00,000/- and Rs.6,00,000/- both dated 06.07.2004, towards discharge of his borrowal liability. The said cheques were presented and returned as dishonored for the reason "Insufficient funds". The complainant caused statutory notice and it was duly received by the accused. After receipt of the same, the accused neither repaid the cheque amount nor issued any reply. Hence, the complainant filed a complaint.

3. The learned counsel for the appellant would further

submit that the learned Magistrate, after having been taken cognizance in C.C.No.2403 of 2005, issued summons to the accused. Thereafter, the appellant/complainant fell in sick and he was not able to attend the Court on each and every hearing. Therefore, the learned Magistrate, issued notice to the complainant for his appearance. Even then, he was not able to present on 29.04.2009. As such, the learned Judicial Magistrate was pleased to dismiss the complaint for non prosecution.

4. The learned counsel for the appellant also submitted that the liability is duly admitted by the accused and the appellant has got good case to succeed before the Trial Court for the offence under Section 138 of Negotiable Instruments Act. Therefore, he prayed for one more opportunity to be given to the appellant/complainant to proceed the case.

4. Heard the learned counsel for the appellant and perused the materials available on record. Though the notice was served on the respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

5. In view of the above submissions made by the counsel for the appellant/complainant, he may be given one more opportunity to proceed his case, since the case was dismissed for non prosecution for the reason that the complaint was pending from the year 2005 and there was no progress. In the above facts and circumstances, this Court is of the opinion that the complainant may be given one more opportunity for restoring the complaint on file. Accordingly, the complaint in C.C.No.2403 of 2005 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai is restored. The learned XVIII Metropolitan Magistrate, Saidapet, Chennai is directed to dispose the complaint with a period of six months from the date of receipt of a copy of this order. Registry is directed to send the case bundle with all connected records of the lower Court, if any received, to the concerned Metropolitan Magistrate forthwith.

6. With the above directions this criminal appeal is allowed.

Sd/-

Assistant Registrar (CS-IX)

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Sub Assistant Registrar

LPP

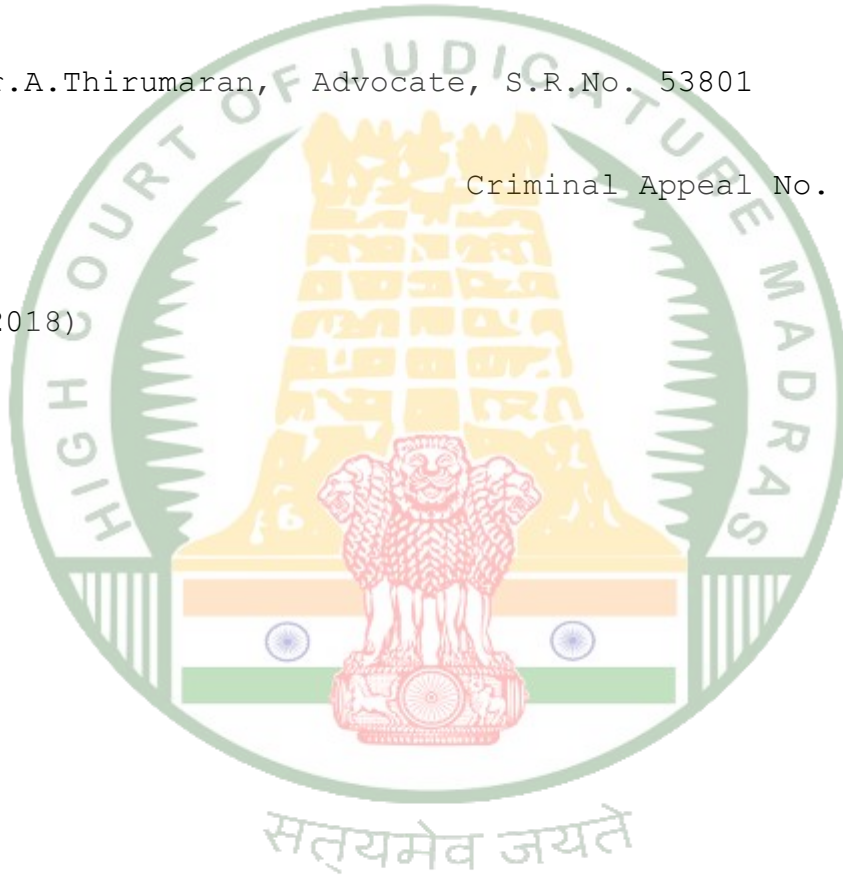
To

- 1.The XVIII Metropolitan Magistrate,
Saidapet, Chennai.
2. Do Thro Chief Metropolitan Magistrate,
Egmore, Chennai.
3. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.A.Thirumaran, Advocate, S.R.No. 53801

Criminal Appeal No. 743 of 2009

CA(CO)
GN(19/09/2018)



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