

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.01.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.KALAIYARASAN

Criminal Appeal No.786 of 2009

A.K.Natarajan,
Proprietor,
M/s.Venkateswara Saw Mills & Timber,
No.23, Doraisamy Reddy Street,
West Tambaram,
Chennai. Appellant/Complainant

Vs

Vincent Respondent /Accused

Criminal Appeal filed under Section 378[4] of the Code of Criminal Procedure, 1973 against the Judgment dated 30.03.2007, passed in C.C.No.1134 of 2003, by the learned Judicial Magistrate, Tambaram.

For Appellant : Mr.V.Ramesh

For Respondent : No appearance

J U D G M E N T

Respondent has not made his appearance, though his name has been printed in the cause list after service of notice.

2.Heard the learned counsel for the appellant.

3.This Criminal Appeal is against the order of the learned Judicial Magistrate, Tambaram, in C.C.No.1134 of 2003 dated 30.03.2007, dismissing the complaint under Section 256 of Cr.P.C., for non appearance of the complainant and thereby, acquitted the accused.

4.Learned counsel for the appellant argued that in the cheque bounce case, the accused had not appeared for the

hearing in January 2007 and Non Bailable Warrant was issued and on the date of hearing viz. 30.03.2007, the case was dismissed under Section 256 of Cr.P.C. for non appearance of the complainant. He vehemently contends that the presence of the complainant on the said date was not required and without issuing any notice to the complainant, the case was dismissed for non appearance of the complainant and therefore, the order of acquittal under Section 256 of Cr.P.C. requires to be set aside by this Court.

5.This Court perused the impugned order and the averments made by the appellant/complainant in the memorandum of appeal.

6.The impugned order discloses that on 30.03.2007, the complainant was not present and therefore, the accused was acquitted under Section 256 of Cr.P.C. There is no mention in the order about the presence of the accused and issuance of notice to the complainant.

7.Under the above said circumstances, the contention of the learned counsel for the appellant/complainant that Non Bailable Warrant against the accused was pending on that day and no notice was issued to the appellant/complainant is acceptable.

8.When Non Bailable Warrant is pending against the accused, the presence of the complainant is not required. It is also pertinent to note that notice was also not issued to the complainant. Therefore, the order passed by the learned Judicial Magistrate is not correct and the same requires interference.

9.In fine, this Criminal Appeal is allowed and the order of the learned Judicial Magistrate, Tambaram, is set aside. The learned Judicial Magistrate, Tambaram is directed to proceed with the trial of the case, after issuance of notice to the accused and dispose of the same within three months from the date of appearance of accused and report to the Registry without fail.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1 The Judicial Magistrate,
Tambaram.

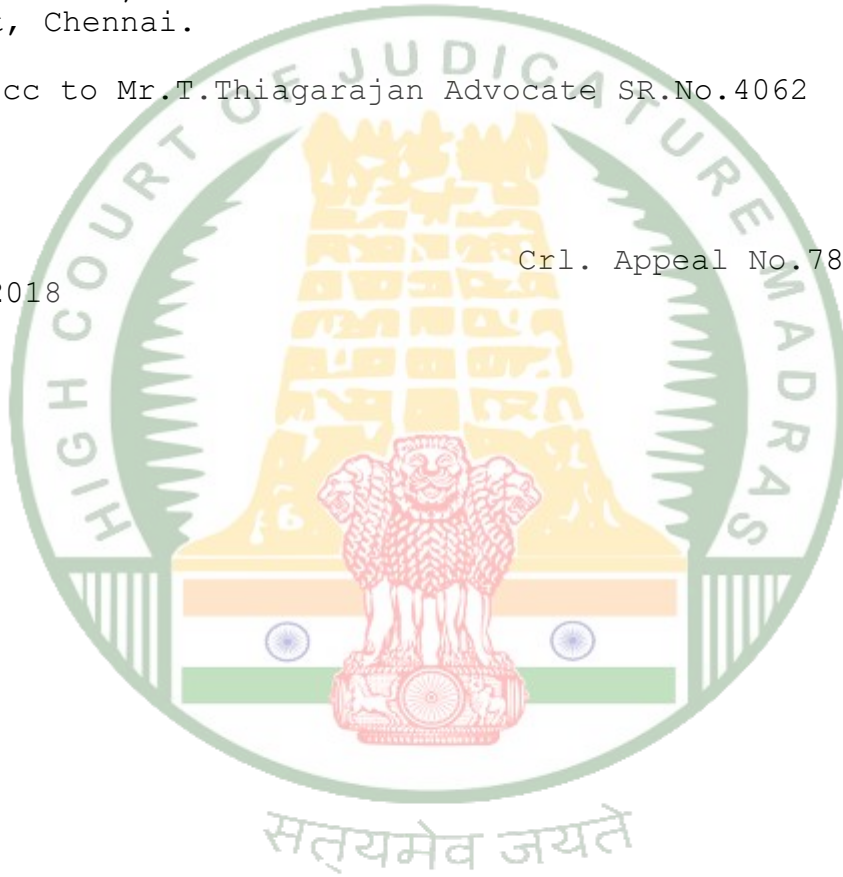
2 The Registrar(Judicial)
High Court, Chennai.

3 The Section Officer,
Criminal Section,
High Court, Chennai.

+lcc to Mr.T.Thiagarajan Advocate SR.No.4062

KP 05.02.2018

Crl. Appeal No.786 of 2009



WEB COPY