

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.07.2018

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Criminal Appeal No.790 of 2009

A.K. Natarajan

...Appellant/complainant

Versus

Maria Gilbert,
Prop.Gilbert Timbers,
Munchirai Pudidai,
Kiliyur Taluk,
Kanyakumari District.

...Respondent/Accused

Criminal Appeal filed under Section 378 of Criminal Procedure Code, against the judgment dated 30.03.2007 made in CC.No.163 of 2005 passed by the learned Judicial Magistrate, Tambaram by acquitting the respondent / accused under section 256 of Cr.P.C. from the offence under Section 138 of the Negotiable Instruments Act to set aside the same.

For Appellant : Mr.T.Thiyagarajan

For Respondent : No appearance.

JUDGMENT

This appeal is arising out of the order dated 30.03.2007 passed in CC.No.163 of 2005 thereby acquitted the accused for the reason that the complainant was not present on 30.03.2007.

2. The brief facts of this case is that the complainant filed the complaint for the offence under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate, Tambaram. At that time, the accused issued three cheques each Rs.25,000/- towards the liability to the complainant and the same were returned for the reason "exceeds arrangements". After issuing notice to the accused, he did not pay the cheque amount.

3. The learned counsel for the appellant submits that after taken cognizance by the learned Judicial Magistrate, issued summons to the respondent. Even after receipt of the summons, the accused had not appeared before the trial court. Therefore, the trial court issued Non-Bailable Warrant against

the accused and it was pending for execution. While being so, on 30.03.2007, the complainant was not present when the case was called. The learned Judicial Magistrate without issuing final notice to the complainant and simply dismissed the complaint for non-appearance of the complainant. Hence, he prayed for allowing the appeal.

4. The accused even after receipt of the notice from this Court did not appear through Pleader or any other person. Today, also neither the accused nor his counsel present. It is seen from the case that the learned Judicial Magistrate has taken cognizance for the offence under Section 138 of the Negotiable Instruments Act in CC.No.163 of 2010 and issued summons to the accused. On receipt of summons, the accused did not appear. The learned Magistrate issued Non Bailable Warrant against the accused and it was pending for its execution. On 30.03.2007, the complainant was not present for the reason that the warrant against the accused was pending.

5. Considering the above facts and circumstances, this Court is of the opinion that the complainant may be given one more opportunity to put forth his case. As such, this appeal is liable to be allowed. Accordingly, this appeal is allowed and the learned Judicial Magistrate, Tambaram is directed to restore the CC.No.163 of 2005 and dispose the same within a period of six months from the date of receipt of a copy of this order. Registry is directed to send all the connected records to the concerned Judicial Magistrate.

Sd/-d/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

drl

To

1. The Judicial Magistrate,
Tambaram.

Copy to
The Record Section,
Criminal Section
High court
Madras.

+1 cc to Mr.T.Thiyagarajan Advocate SR.NO. 52219

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VG II(CO)
ASK(27/08/2018)