

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.01.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Criminal Appeal No.176 of 2016

M/s.Mansi Finance (Chennai) Ltd.,
Rep. by its Managing Director Mr.Suresh Bafna,
No.22, Mulla Shaib Street,
Sowcarpet,
Chennai-600 079.

... Appellant

Vs.

1. M/s.Dessma Engineering Private Limited,
Rep. by its MD A.S.P.Winston.
2. A.S.P.Winston,
Managing Director of
M/s.Dessma Engineering Private Limited.
3. A.S.P.Milton,
Director,
M/s.Dessma Engineering Private Limited.
4. A.S.K.Newton,
Director,
M/s.Dessma Engineering Private Limited.
5. A.S.B.Brighton,
Director,
M/s.Dessma Engineering Private Limited.
6. Jasmine Princess,
Director,
M/s.Dessma Engineering Private Limited.

... Respondents

Criminal Appeal filed under Section 378(4) of Criminal Procedure Code, to call for records in C.C.No.2891 of 2003 on the file of the Hon'ble XVI Metropolitan Magistrate Court, Chennai and set aside the order of dismissal for default under Section 256 of Cr.P.C. as well as the order of acquittal and restore the complaint's on file by directing the Hon'ble XVI restore the complaint's on file by directing the Hon'ble XVI Metropolitan Magistrate to conduct fresh Trial.

For Appellant : Mr.V.Bhoopathi
For Respondent :No appearance

JUDGMENT

This appeal arises out of the order passed in C.C.No.2891 of 2003 by an order dated 04.12.2015, on the file of the XVI Metropolitan Magistrate Court, George Town, Chennai.

2.The appellant herein is the complainant before the trial Court, who filed a private complaint under Section 200 of Criminal Procedure Code for the offences committed by the respondents under Section 138 of the Negotiable Instruments Act.

3.When the said complaint was taken on file under C.C.No.2891 of 2003 on the file of the XVI Metropolitan Magistrate Court, George Town, Chennai, and when the same was taken up for trial for several times, it seems that no progress had been shown.

4.The learned Judge of the trial Court also found that the process for causing service to the accused also had not been paid by the complainant. Therefore, the learned Judge invoking Section 256(1) of Criminal Procedure Code, had dismissed the complaint by acquitting the accused by an order dated 04.12.2015. As against which the present appeal has been filed.

5.When the case was called on 02.01.2018, no one appeared for the appellant and therefore, it was directed to be listed after two weeks. Accordingly, the appeal has been again listed today for hearing.

6.Today also, when the case is called, none appeared for the appellant. Therefore, this Court is inclined to take up the appeal to dispose of the same, on merits.

7.In the impugned order dated 04.12.2015, the learned Magistrate has recorded that the complaint was filed in the year 2003. However, after 12 years, till today, the complainant did not come forward to pay Batta for causing service to the accused. Also, when the complaint was called, the complainant has not chosen to appear before the Court. Since, the complaint was pending for 12 years and inspite of such long pending, the complainant did not come forward either to appear before the trial Court or to see that the service is caused to the accused, the learned Judge of the trial Court having no other option except to invoke Section 256 of the Code, has acted upon accordingly.

8. Section 256 of the Code provides that, "if, the summon has been issued on a complaint and the complainant does not appear, the Magistrate shall, notwithstanding anything herein before contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day". The only exception to this course of action is that, as per the proviso to Section 256(1), if the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of the opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

9. In the case in hand, according to the learned Judge, based on the records, the complaint had been pending for 12 years before the trial Court. However, no steps had been taken to serve summons to the accused since the batta has not been filed and also neither the complainant nor the pleader of the complainant appeared before the trial Court. Therefore, the only option available before the trial Court is to invoke Section 256 of the Code. Accordingly invoking the same, the learned Judge, dismissed the complaint and acquitted the accused.

10. This Court on perusal of the said order, finds no infirmity, no illegality or no impropriety attached with the said order. Therefore, this Court is not inclined to interfere with the said order of the trial Court dated 04.12.2015. Accordingly, this appeal fails and hence the same is dismissed.

s/d-
Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

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To

1. The XVI Metropolitan Magistrate,
George Town,
Chennai-600 001.

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2. Do Thro The Chief Metropolitan Magistrate
Egmore, Chennai 8.

3. The Public Prosecutor,
High Court, Madras.

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