

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.02.2018

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Cr1.A.No.698 of 2008

M.Anbazhagan

...Appellant/Complainant

Vs.

D.B.Kumar

...Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C., against the order dated 12.08.2008 made in C.C.No.205 of 2006 on the file of the Judicial Magistrate No.1, Dharmapuri.

For Appellant : Mr.C.Prabakaran

For Respondent : No Appearance

JUDGMENT

This criminal appeal is preferred by the appellant/complainant against the order dated 12.8.2008 made in C.C.No.205 of 2006 on the file of the learned Judicial Magistrate No.1, Dharmapuri wherein the learned Magistrate acquitted the respondent/accused for the offences under section 138 of the Negotiable Instruments Act.

2.I heard Mr.C.Prabakaran, learned counsel for the appellant and perused the entire materials available on record. No representation on behalf of the respondent.

3.Brief case of the appellant/complainant:

The facts of the case is that the respondent/accused borrowed a sum of Rs.5 lakhs from the appellant/complainant to discharge his dues to the creditor on 17.10.2005 and he gave a cheque dated 17.10.2005 drawn on Dharmapuri co-operative Town Bank Ltd, Dharmapuri branch bearing No.015630 to discharge his liability to the appellant. When the cheque was deposited in the Indian Bank, Dharmapuri Branch for collection by the Appellant, the cheque was returned unpaid with endorsement insufficient funds. Therefore the appellant /complainant caused a statutory notice to the respondent /accused on 15.11.2005 and the same was received by the respondent on 17.11.2005, despite of the notice the respondent failed and neglected to pay the amount covered under the cheque. Hence, the appellant filed the complaint under section 138 of Negotiable Instruments Act.

4.The learned trial Court framed the charges against the appellant/accused under section 138 of IPC. The appellant / accused denied the charges.

5.During the trial, the prosecution examined Pws-1 to 3, marked Exhibits-P1 to P5 and no witnesses examined on the side of the respondent/accused.

6.After the trial, on appreciating the material available on record the trial Court acquitted the respondent/accused for the offences under section 138 of Negotiable Instruments Act and dismissed the complaint under section 256(1) of Cr.P.C for non prosecution of the case. Aggrieved over the same, the appellant/accused preferred this criminal appeal.

7.The learned counsel for the appellant/complainant submits that the respondent counsel have inadvertently failed to appear before the Court on the day when the matter is called for. In such an eventuality, the learned Magistrate has erroneously exercised the discretionary power and acquitted the respondent/accused. Taking recourse to section 256(1) Cr.P.C at the threshold of enquiry is against law and improper.

8.The learned counsel for the appellant/complainant submits that the learned magistrate ought to have afforded one more opportunity to the appellant/complainant by adjourning the hearing of the case to some other day and facilitated reasonable time to proceed the case. By dismissing his complaint under section 256 Cr.P.C the appellant has been denied his right to pursue his legal remedy available under the statute entailing irreparable loss and undue hardship.

9.Hence, in the interest of justice by giving one more opportunity to the appellant/accused, I am inclined to pass the following order.

10.In the result:

(a) This Appeal is allowed by setting aside the order in C.C.No.205 of 2006 dated 12.08.2008 on the file of the learned Judicial Magistrate No.1, Dharmapuri;

(b) The learned Judicial Magistrate No.I, Dharmapuri is directed to dispose of the case in C.C.No.205 of 2006, within a period of four weeks from the date of receipt of a copy of this order and also directed to issue summon to both parties.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate No.1,
Dharmapuri.

Crl.A.No.698 of 2008

CP (CO)

RRS (03/04/2019)



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