

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.02.2018
CORAM
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
Criminal Appeal No.479 of 2016

Mohammed Kaleemullah Proprietor
M/s. Trans Infra and Logistics
rep. by P/A S.Sathiya Seelan,

... Appellant/Complainant

Versus

- 1.Udayanath Sahoo (UN Sahoo)
Managing Director,
M/s. RUKMANI Infra Projects Pvt. Ltd.,
Plot No.242, (Near Bilasini Mandap)
District Center, Chandrasekharpur,
Bhubaneswar - 751 016, Odisha.
- 2.Raj Kishore Sahoo (RN Sahoo)
Managing Director,
M/s. RUKMANI Infra Projects Pvt. Ltd.,
Plot No.242, (Near Bilasini Mandap)
District Center, Chandrasekharpur,
Bhubaneswar - 751 016, Odisha.
- 3.Ms.Mousumi Sahoo,
Director (F & A),
M/s. RUKMANI Infra Projects Pvt. Ltd.,
Plot No.242, (Near Bilasini Mandap)
District Center, Chandrasekharpur,
Bhubaneswar - 751 016, Odisha.
- 4.Suvendhu Choudry,
Projects Head,
M/s. RUKMANI Infra Projects Pvt. Ltd.,
Plot No.242, (Near Bilasini Mandap)
District Center, Chandrasekharpur,
Bhubaneswar - 751 016, Odisha.

5. M/s. Rukmani Infra Projects Pvt. Ltd.,
rep. by Kina Ranjan Pani
M/s. RUKMANI Infra Projects Pvt. Ltd.,
Plot No.242, (Near Bilasini Mandap)
District Center, Chandrasekharpur,
Bhubaneswar - 751 016, Odisha.

.. Respondents/Accused

Criminal Appeal filed under Section 378 of Criminal Procedure Code, against the order of dismissal dated 08.01.2016 passed by the learned Judicial Magistrate-II, Chidambaram, in S.T.C.No.514 of 2015.

For Petitioner : Mr.N.Ilangovan

O R D E R

This Criminal Appeal has been preferred against the order passed by the learned Judicial Magistrate-II, Chidambaram in S.T.C.No.514 of 2015 on 08.01.2016. By the said order dated 08.01.2016, the learned Judge has dismissed the private complaint filed by the appellant/complainant under Section 200 read with Section 138 of the Negotiable Instruments Act against the respondents/accused persons.

2. Heard the learned counsel for the appellant. Though the name of the respondents with full address have been shown in the cause list none appears for the respondents.

3. Learned counsel for the appellant would submit that the appellant either was present or had been represented by his counsel all along. When such being the position prior to 08.01.2016, during the earlier hearings, the next hearing date was noted as 11.01.2016 by mistake and therefore, when the counsel appeared on 11.01.2016 from Chennai on behalf of the complainant he came to know that on 08.01.2016, the case was called and it was dismissed by the learned Judge for non prosecution.

4. In this regard, the learned counsel for the appellant would further submit that the complainant appellant had not been in the habit of absenting himself and whenever he was absenting, he was represented by his counsel by filing a petition to dispense with his presence and only because of the wrong noting of the hearing date as 11.01.2016 instead of 08.01.2016, on the date of hearing, neither the complainant nor his counsel appeared and immediately, the learned Judge by invoking Section 256 of the Code, has dismissed the complaint for non-prosecution.

5. Learned counsel for the appellant would also submit that in fact the complaint was originally filed before the Fast Track Court, Poonamallee, where the original jurisdiction was lying based on the drawees bank, where only, the bank of the drawee is situated.

6. Subsequently, the same had been transferred to the present court at Chidambaram. In this regard, the learned counsel would also submit that by virtue of the amendment made by a new Section called 142(A) in the Negotiable Instruments Act, which came into effect from 15.06.2015, the said complaint filed by the appellant should have been transferred to the Poonamallee Court as the jurisdiction since has been vested there as per Section 142(A) of the Act, the learned Magistrate ought not to have been passed this order which is impugned herein.

7. I have considered those submissions made by the learned counsel for the appellant and have perused the materials placed before this Court.

8. The learned Judge has not recorded that the appellant/complainant had been the chronicle absentee for several hearings. He has only recorded that on the particular date of hearing, there was no representation and therefore, invoking Section 256 of the Code, the complaint was dismissed by the learned Judge.

9. No doubt, Section 256 of the Code of Criminal Procedure empowers the Magistrate to dismiss the complaint and acquit the accused when complainant was absent on the date which is fixed for hearing, after issuance of summons to the accused. The very same Section 256 of the Code also empowers the Magistrate to adjourn the hearing to some other date, if any acceptable reason is available with the Magistrate.

10. Hear in the case in hand, since the complainant also had been absent on the particular date because of wrong noting of the hearing date, the said reason though was not rightly available with the Magistrate on that date as none appeared on that date i.e., 08.01.2016, however, the fact remains that since the said reason has been given by the appellant, the order passed by the learned Magistrate can be interfered with.

11. Moreover, as has been pointed out by the learned counsel for the appellant in view of the amendment made by bringing Section 142(A) of the Negotiable Instruments Act, and on the date i.e., on 08.01.2016, the Court which passed the present impugned order has got no jurisdiction to pass such order, this court is of the view that the impugned order can be interfered

with and accordingly, the said order is set aside and following orders are passed in this Appeal.

That the impugned order made by the learned Judge dated 08.01.2016 in S.T.C.No.514 of 2015 is set aside and the matter is remitted to the learned Magistrate to take up on file and proceed further by taking into account Section 142(A) of the Negotiable Instruments Act.

12. With this direction, this Criminal Appeal is ordered.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

smi

To

1.The Judicial Magistrate-II,
Chidambaram,

2. The Section Officer
Crl.Record Section
High Court, Madras

+1 cc to M/s.N.Ilangovan Advocate sr 9279

Crl. A. No.479 of 2016

nri(co)
aa09/03/2018

सत्यमेव जयते

WEB COPY