

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.01.2018
CORAM
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
Criminal Appeal No.225 of 2013

M/s Sundaram Finance Limited.,
Rep., by its Assistant Manager -Legal,
Mr.Madhusudanan,
No.21, Patullos Road,
Chennai 600 002

.. Appellant/ Complainant

Versus

Dr.K.Balasubramanian ... Respondent/ Accused

Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to call for the records in C.C.No.6555 of 2009 on the file of the learned Metropolitan Magistrate, Saidapet, Chennai and to examine the same and to set aside the judgment and order of dismissal of the complaint in C.C.No.6555 of 2009, on the file of the learned XVII Metropolitan Magistrate Saidapet, Chennai vide judgment dated 3.12.2012.

For Appellant : No Appearance

For Respondent : No Appearance

J U D G M E N T

This Criminal Appeal has been preferred against the order passed by the XVII Metropolitan Magistrate, Saidapet, Chennai - 600 015 in C.C.No.6555 of 2009 dated 3.12.2012.

2. When the case was called today, none appeared for the appellant as well as the respondent.

3. I have perused the impugned order and judgment passed by the learned Metropolitan Magistrate on 3.12.2012. The impugned judgment simply tells that the complainant is absent. No representation, no petition filed from 23.01.2012, 6.03.2012, 30.03.2012, 6.07.2012 and 22.11.2012. Hence, the complaint was dismissed.

4. On perusal of the said judgment of the trial Court, it can be ascertained that the said order has been passed by the learned Magistrate only by invoking the provision of Section 256(1) of the Code.

5. It was a private complaint filed by the appellant before the trial Court to punish the respondent/accused for the alleged offence punishable under Section 138 of the Negotiable Instruments Act.

6. Though such a complaint has been filed and summons has been issued on the respondent/accused, it seems that on several days when the case was called, the complainant was absent. In this regard, by narrating the facts in the grounds of Appeal filed by the appellant herein, he states that the case was posted on 23.01.2001 and on that date, the appellant was absent and thereafter, due to advocates boycott on 6.03.2012 and again on 6.07.2012, neither the complainant nor the counsel for the complainant was present. Again on 22.11.2012, the complaint could not be proceeded and therefore, on 3.12.2012 the complaint was dismissed for default.

7. Though no plausible reason has been adduced by the appellant in the grounds of Appeal filed in this Appeal explaining the non-appearance of the learned counsel appearing for the appellant / complainant nor the complainant himself before the trial Court, the learned Magistrate while invoking section 256(1) of the Code should have given an opportunity by issuing a final notice to the complainant and thereafter, if at all, the complainant did not appear even after final notice, then he could have invoked section 256(1) of the Code and thereby, the complaint can be dismissed by giving a clear acquittal of the respondent/accused.

8. The reason for invoking of Section 256(1) of the Code as per the language used in the said Section, contemplates that, the Magistrate shall, notwithstanding anything herein before contained, shall acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day.

9. Therefore, as per the provision under Section 256(1) of the Code, while disposing the complaint in case of non-appearance of the complainant after issuance of final notice, the Magistrate concerned shall dispose the case by giving acquittal to the accused. Herein the case in hand, on perusal of the impugned order issued by the learned Magistrate, though the case has been dismissed, the learned Judge has not given acquittal to the accused. Therefore, this Court feels that the learned Judge has not followed the mandatory provision under Section 256(1) of the Code and therefore, for that reason, this Court feels that this Appeal can be remitted back to the trial Court for complying with the mandatory requirement under Section 256(1) of the Code. Accordingly the following orders are passed:-

The present Criminal Appeal is remitted back to the learned Magistrate (trial Court) with a direction that the trial Court Judge shall issue summons to the complainant as well as the accused by way of final notice before invoking Section 256(1) of the Code and in spite of final notice being served on the complainant, if the complainant does not appear before

the Trial Court on the date fixed for hearing, it is open to the Magistrate to dispose the complaint by dismissing the same and thereby, giving acquittal to the accused/ respondent.

With these directions, this Criminal Appeal is Allowed and the matter is remitted back to the file of the learned XVII Metropolitan Magistrate Saidapet, Chennai.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sts
To

1. The Learned Metropolitan Magistrate,
Saidapet,
Chennai.
2. The Learned Principal
Sessions Judge,
George Town, Chennai.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Shankar, Advocate Sr.No.6473

LRS (CO)
sm:11.4.2018

Judgment in
Crl.A.No.225 of 2013

सत्यमेव जयते

WEB COPY