

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Criminal Appeal No.609 of 2012

Alkesh Jain,
Proprietor,
M/s.Adinath Metals,
Old No.104,
Linghi Chetty Street,
Chennai 600 001

.. Appellant/Complainant

Versus

1) M/s Flocon Systems Pvt., Ltd.,
Rep., by its Managing Director,
Mr.Hanjira Singh,
No.288, Pappan Kupam,
Gummidipundi,
Pin 601 201

2) Hanjira Singh

.. Respondents/ Accused

Prayer: Criminal Appeal filed under Section 378(4) of Criminal Procedure Code, to set aside the order of Acquittal dated 10.10.2011 in C.C.No.14056 of 2007, on the file of VII Metropolitan Magistrate, George Town, Chennai.

For Petitioner : No appearance

For Respondents: No appearance

J U D G M E N T
सत्यमेव जयते

Though the case is listed for hearing today, no one appeared either for the appellant or for the respondents' side.

2. The learned Trial Court Judge through the impugned order dated 10.10.2011, has dismissed the private complaint filed by the appellant/complainant, on the ground of his absence before the trial Court, inspite of repeated calling.

3. According to the impugned judgment, the learned Judge has recorded that, there was no representation on the side of the appellant/complainant. Even after issuing final notice, the appellant/complainant did not appear before the trial Court to proceed with the case. The learned Judge has recorded in the

impugned order dated 10.10.2011 that, without co-operation either from the appellant/complainant or the learned counsel appearing for the appellant/complainant, the trial Court will not be able to proceed the matter further, thereby, invoking Section 256(1) of Criminal Procedure Code, the learned Judge has dismissed the said complaint by the judgment dated 10.10.2011.

4. According to Section 256 of the Criminal Procedure Code, "if the summons has been issued on complaint and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, 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."

5. Here in the present case on hand, on the date of hearing inspite of repeated calling, the appellant/complainant did not appear before the trial Court. Based on the records, it was also recorded by the learned Judge in the impugned order that, the complainant did not appear before the trial Court during several hearings. Therefore, we cannot find fault with the learned Judge for invoking Section 256(1) of the Criminal Procedure Code.

6. Even when the learned Magistrate while invoking Section 256(1) of the Code, shall have power to pass orders, acquitting the accused, herein the case in hand, the learned Magistrate has only dismissed the complaint but not acquitted the accused which is a mandatory requirement, as contemplated under Section 256(1) of the Code. It is a settled proposition that, whenever the trial Court is invoking Section 256(1) of the Code, in case of absence of the appellant/complainant without submitting proper reasons, then the learned Magistrate can very well proceed for invoking 256(1) of the Code and shall acquit the accused. Without acquitting the accused, mere dismissal of the complaint will not serve the purpose of law under Section 256(1) of the Code.

7. Therefore, in this context, this Court is of the considered view that, the orders passed by the trial Court without giving acquittal to the accused and mere dismissal of the complaint, will not be treated as an order under Section 256 (1) of the Code and accordingly, the said order which is impugned herein is liable to be interfered with.

8. In view of the above, the impugned order is set aside and remitted back to the learned Judge who shall issue summons to both the appellant/complainant as well as the respondents, fixing the date of hearing, after issuance of summons to appear before the trial Court if the complainant does not appear it is open to the learned Judge to invoke Section 256(1) of the Code,

towards acquitting the accused, as contemplated under the said Section.

10. With these directions and observations, the present Criminal Appeal is Allowed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1.The VII Metropolitan
Magistrate,
George Town, Chennai.

2.-do- Thro The Chief Metropolitan Magistrate,
Egmore, Chennai.

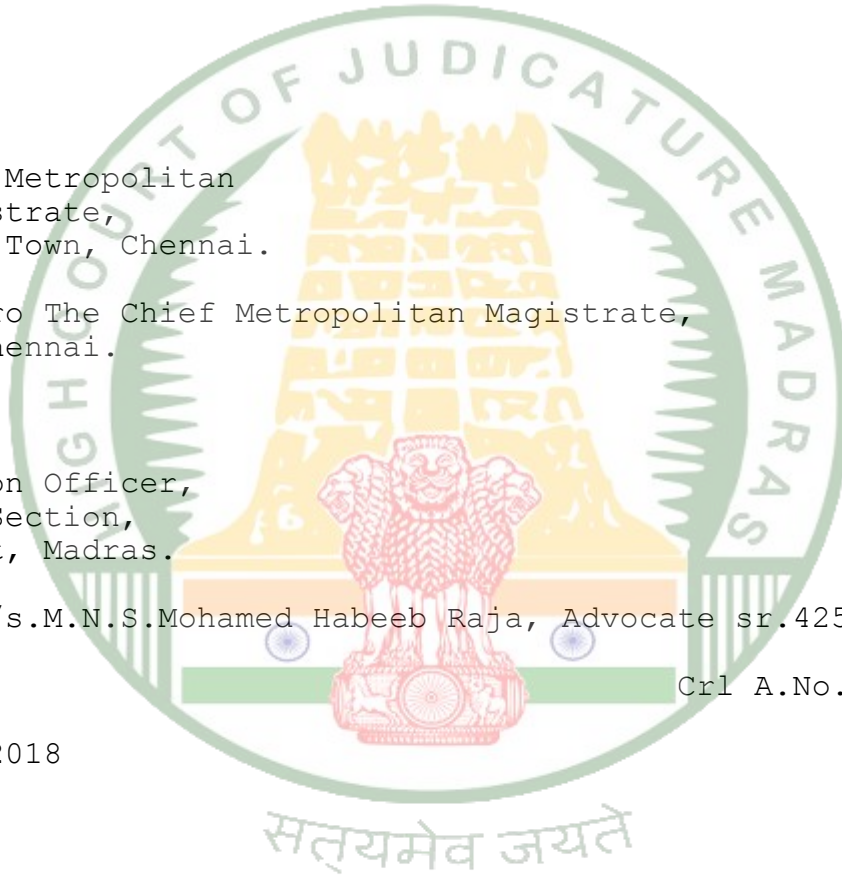
Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.M.N.S.Mohamed Habeeb Raja, Advocate sr.4254

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