

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Criminal Appeal No.656 of 2012

E.I.D. Parry (India) Ltd.,
represented by its Manager,
Mr.B.B.Muthu, "Dare House",
No.234, N.S.C.Bose Road,
Chennai 600 001.

... Appellant/ Complainant

Versus

1) M/s. Rakesh Agro,
F-11, Taparia Building,
Jalori Gate, Jodhpur 342 003.
Rajasthan,
rep., by its Partner,
Mr.Chander Sekar Vyas.

2) Chandra Shekar Vyas ... Respondents/ Accused

Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the dismissal order dated 10.12.2011 passed in C.C.No.5528 of 2000 on the file of the VII Metropolitan Magistrate, George Town, Chennai.

For Appellant : Mr.M.Aravind Subramaniam

For Respondent : No appearance

J U D G M E N T

This Appeal has been filed to set aside the dismissal order passed by the VII Metropolitan Magistrate, George Town, Chennai in C.C.No.5528 of 2000 dated 10.12.2011.

2. It is the case of the appellant that, he made a private complaint against the respondents/accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. When the complaint filed by the appellant was pending trial, on 10.12.2011, the complainant was not able to appear and also, no petition was filed by his counsel to dispense with his

personal appearance on that particular date. Therefore, the learned Judge by invoking the provision of Section 256 of the Code of Criminal Procedure, dismissed the complaint, against which, the present Appeal has been filed.

4. Heard Mr.M.Aravind Subramaniam, learned counsel for the appellant. In spite of notice having been served on the respondents and their names with address were also printed in the cause list, none appeared on behalf of the respondents.

5. I have perused the impugned order of the learned Judge dated 10.12.2011. In the said order, the learned Judge has recorded that the complainant was absent for many hearings and there is no representation. It was further recorded that, final notice was already issued to the complainant, but neither the complainant nor the complainant's counsel appeared even on the date of hearing. In view of the non co-operation of the parties, especially, the complainant, the Court was not able to proceed further, hence, the complaint was dismissed.

6. It was argued by the learned counsel for the appellant that, it was not particularly mentioned in the impugned order, as to on which dates the complainant was absent, therefore, the said reasoning given by the learned Judge is not acceptable, as according to the learned counsel for the appellant, the appellant/complainant had been regularly appearing either by himself or through his pleader.

7. Though such stand has been taken by the learned counsel for the appellant before this Court, on perusal of the findings recorded by the learned Judge in the impugned order, it seems that, the complainant even after receipt of the final notice, had not chosen to appear before the Court below. In order to meet such circumstances, the power is vested with the learned Magistrate under Section 256 of the Code, by invoking the said provision he can dismiss the very complaint itself.

8. Section 256 of the Criminal Procedure Code clearly mandates that, if the summons has been issued on the complainant and on the date appointed for the appearance of the accused, if the complainant does not appear, the Magistrate shall acquit the accused only for some reason, which he thinks it proper or to adjourn the case to some other day.

9. In view of such power vested with the learned Magistrate to invoke Section 256 of the Code, to dismiss the complaint, if the complainant did not appear, even on receipt of the final notice to the complainant, on the said hearing date,

the exercise of such power for dismissing the complaint by the learned Magistrate cannot be found fault with.

10. However, by invoking Section 256 of the Code, the learned Magistrate, while dismissing the complaint, has to give the acquittal to the accused. Here, in the case on hand, on perusal of the impugned order, this Court finds that, the learned Judge has not given any acquittal to the accused, unless acquittal is given, the order passed by the learned Judge, like the one impugned herein, cannot be construed to be within the provision of Section 256 of the Code.

11. In view of this lacuna, this Court is of the view that, the order impugned has to be interfered with and the matter has to be remitted back to the learned Magistrate for taking appropriate decision.

12. In the result, the impugned order of the learned Magistrate dated 10.12.2011 made in C.C.No.5528 of 2000 on the file of the VII Metropolitan Magistrate, George Town, Chennai is set aside and the matter is remitted back to the learned Magistrate with a direction that, fresh summons to be issued to the complainant as well as the respondent/accused, by fixing the date of hearing and it is made clear that, on the date of hearing, even after the summons from the Court served and the complainant does not appear, it is open to the learned Magistrate to invoke Section 256 of the Code and proceed with the acquittal of the accused by dismissing the complaint, as contemplated under the said provision of the Code.

13. With these observations, this Criminal Appeal is ordered.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

- 1) The VII Metropolitan Magistrate,
George Town,
Chennai

2.The Chief Metropolitan Magistrate,
Egmore, Chennai(For information)

copy to:

The Section Officer,
Criminal Section,
High Court, Madras.(records sent to lower court immediately)

+lcc to Mr.M.Aravind Subramaniam, Advocate sr.no.19561

Judgment in
Criminal Appeal No.656 of 2012

nr 24/07/2018



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