

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.01.2018
CORAM
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
Criminal Appeal Nos.488 & 489 of 2013

J. Ranganathan .. Appellant/Complainant
in both Criminal Appeals Versus

J.Sivakumar .. Respondent/ Accused
in both Criminal Appeals

Common Prayer: Criminal Appeals filed under Section 378(4) of Criminal Procedure Code, to condone the absence and non representation of the petitioner/complainant and may set aside the order dated 2.12.2011 and may restore the complaint in C.C.Nos.1059 & 1060 of 2009 respectively, on the file of the learned V Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : No Appearance
For Respondent : No Appearance

C O M M O N J U D G M E N T

As the issue involved in both Criminal Appeals is one and the same, the cases are taken up for disposal by this Common Judgment.

2. Though the cases were listed for hearing today, no one appeared either for the appellant side or for the respondent side.

3. The learned Trial Court Judge through the impugned order dated 2.12.2011, has dismissed the private complaint filed by the appellant/complainant, on the ground of his absence before the trial Court, inspite of repeated calling.

4. According to the impugned judgment, the learned Judge has recorded that, three times the case was called but the appellant/complainant did not appear. Even after passing over the same in the afternoon session and when once again the case was called, even at that time, the appellant/complainant did not appear. Even the learned counsel appearing for the appellant/complainant did not appear before the trial Court. It is also recorded by the learned Judge that during several hearings, the appellant/ complainant did not appear before the trial Court, thereby, invoking Section 256(1) of Criminal Procedure Code, the learned Judge has dismissed the said complaint by the judgment dated 2.12.2011.

5. 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."

6. Here in the present case on hand, on the date of hearing inspite of repeated calling, the appellant/complainant did not appear and even in the after noon session, when the case was once again called, the appellant/complainant was absent. Based on the records, it was also recorded by the learned Judge in the impugned order that, the complainant did not appear for several hearings. Therefore, we cannot find fault with the learned Judge for invoking Section 256(1) of the Criminal Procedure Code.

7. Even when the learned Magistrate while invoking Section 256(1) of the Code, shall have the 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.

8. 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.

9. 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 respondent, fixing the date of hearing, after issuance of summons to appear before the trial Court and 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 Appeals are allowed.

Sd/-
Assistant Registrar(CS III)

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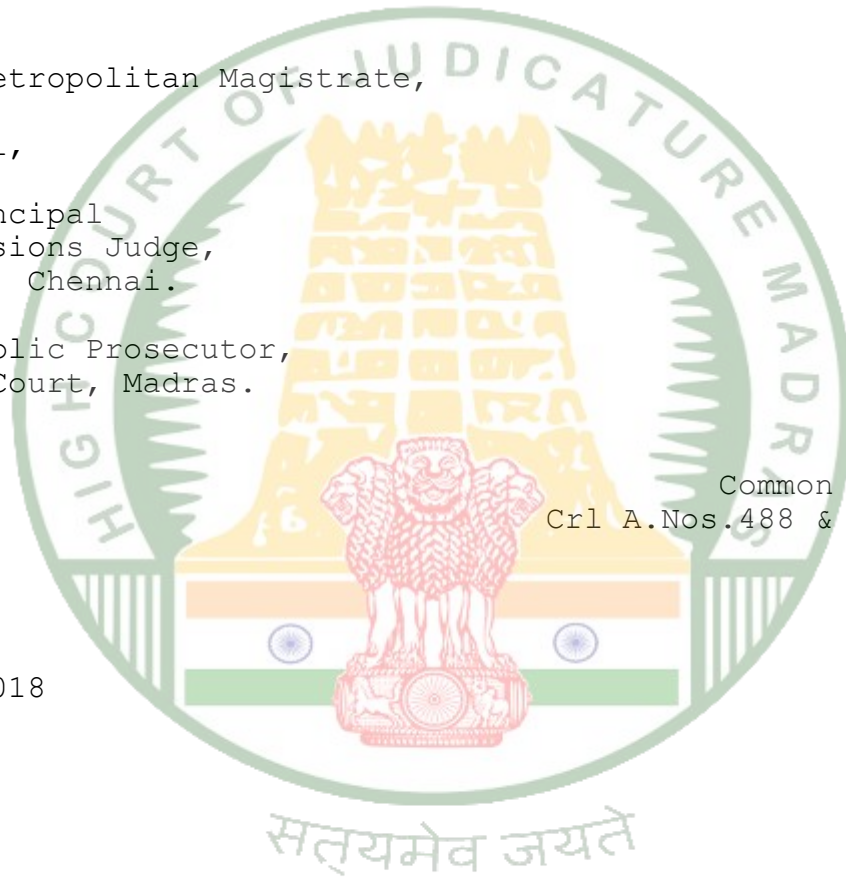
Sub Assistant Registrar

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To

- 1.The V Metropolitan Magistrate,
Egmore,
Chennai,
- 2.The Principal
Sessions Judge,
Egmore, Chennai.
3. The Public Prosecutor,
High Court, Madras.

Common Judgment in
Crl A.Nos.488 & 489 of 2013

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