

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.16812 of 2018

M/s.K9 Marketing Solutions,
Rep. by its Power of Attorney Holder,
(Branch Manager) J.Uma Shankar
No.46/9, Ground Floor,
Alagiri Nagar Main Road,
Vadapalani, Chennai - 600 026.
... Petitioner

Vs

M/s.Fine Dots Prepress Solution,
Rep. by its Proprietor K.Balamurugan,
New No.148/2 (86), Jani Jan Khan Road,
Royapettah, Chennai - 600 014.
... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order of dismissed for default passed in C.C.No.6997 of 2017, dated 04.06.2018, on the file of the XVII Metropolitan Magistrate Court, Saidapet, Chennai - 600 015 and direct the learned magistrate to restore the above case and proceed against the respondent in accordance with law.

For Petitioner : Mr.V.Murugesan

O R D E R

This petition has been filed to set aside the order dated 04.06.2018 passed by the XVII Metropolitan Magistrate Court, Saidapet in C.C.No.6997 of 2017.

2.Heard the learned counsel for the petitioner and perused the materials placed on record.

3.The petitioner initiated a prosecution in C.C.No.6997 of 2017 under Section 138 of Negotiable Instruments Act, 1881 before the XVII Metropolitan Magistrate, Saidapet, Chennai against one Balamurugan. As stated above, the case was taken on file and process was issued. However, it appears that the de facto complainant was not present for two days and therefore,

the learned Magistrate has dismissed the complaint by passing the following order on 04.06.2018 :

"Complainant absent, No representation, Sufficient chance given, dismissed for default."

Challenging the said order, the complainant is before this Court.

4.Learned counsel for the complainant submitted that the complainant has filed an appeal against acquittal under Section 372 Cr.P.C. before the Sessions Court, Chennai and the same has been returned with the following endorsement :

"How this appeal under Section 372 Cr.P.C. maintainable before this Court, since the complainant has failed to appear before the concerned Court and so the case has been dismissed for default."

5.In the opinion of this Court, the Code of Criminal Procedure does not envisage dismissal for default, unlike the Code of Civil Procedure. In the Code of Criminal Procedure, the complaint can be dismissed under Section 256 Cr.P.C. for the absence of the complainant and the effect of the dismissal is the acquittal of the accused. Hence, the remedy available to the complainant is not under Section 482 Cr.P.C., but one under Section 372 Cr.P.C., namely, appeal against acquittal.

6.With this observation, this petition is closed with liberty to the petitioner to workout his remedies in the manner known to law. The time spent by the petitioner in this court from 28.06.2018 to 02.07.2018 will stand excluded, while computing the period of limitation.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The XVII Metropolitan Magistrate Court, Saidapet, Chennai - 600 015.
2. Do Through Chief Metropolitan, Magistrate, Egmore, Chennai.

+1cc to Mr.V.Murugesan, Advocate, S.R.No.42125

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GSP(09/07/2018)