

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.A.No.622 of 2009

Mageswari

.. Appellant/Complainant

Vs.

K.Dinakaran
O/o.Junior Engineer,
TNEB, Sub-Station,
Punnai, Nemili,
Vellore District.

.. Respondent/Accused

Prayer: Criminal appeal filed under Section 378 of Criminal Procedure Code, to set aside the order passed by the learned Judicial Magistrate No.IV, Vellore in C.C.No.270 of 2008 dated 20.08.2009.

For Appellant : Mr.P.Krishnan

For Respondent : Mr.E.Kannadasan,

J U D G M E N T

This Criminal appeal has been filed by the appellant/complainant to set aside the order dated 20.08.2009 made in C.C.No.270 of 2008 on the file of learned Judicial Magistrate No.IV, Vellore.

2.The appellant is complainant and the respondent is the accused in this appeal.

3.The case of the appellant is that the respondent borrowed a sum of Rs.90,000/- on 25.05.2008 from the complainant as hand loan and agreed to re-pay the same within one month. Accordingly, the respondent had issued a cheque dated 25.06.2008 in favour of the complainant's concern "The Vellore Agency" for Rs.90,000/- bearing cheque No.189230 of ICICI Bank Limited, Vellore and the appellant presented the cheque for collection on 25.06.2008 and the same was returned with an endorsement

"insufficient fund". The information from the bank was received on 27.06.2018. Thereafter, the lawyer notice was issued on 09.07.2018, the said notice was received by the accused on 10.07.2018. However, he failed to reply to the said notice. Hence, he filed the complaint under Section 138 of Negotiable Instruments Act, that complaint was taken on file on 20.08.2009, on that day the accused was present before the Court. However, the complainant not appeared before the Court, on account of non appearance of the appellant/complainant, lower Court acquitted the accused under Section 256(1) Cr.P.C. Challenging the said order, the present appeal is filed.

4.The learned counsel for the appellant would submit that on 20.08.2009, the Advocate declared boycott. The learned counsel further submit that without giving opportunity, the lower Court dismissed the complaint on initial stage itself which is unsustainable and this Court may set aside and remand the matter for fresh consideration.

5.The learned counsel for the respondent would submit that respondent have no objection to set aside and remand back the matter.

6.So on perusal of the order, it is seen that the complaint was dismissed under Section 256(1) Cr.P.C. In order to give an opportunity to the appellant, I am inclined to set aside the order. Accordingly, the impugned order dated 20.08.2009 is set aside and the matter is remanded back to the learned Judicial Magistrate No.IV, Vellore, for fresh disposal on merits.

7.Considering the date of presentation of the said case, without expressing any opinion I am inclined to set aside the order of the trial Court and direct the learned Judicial Magistrate No.IV, Vellore, to complete the trial and pass orders within a period of three months from the date of receipt of a copy of this order.

8.This criminal appeal is disposed of accordingly.

AT

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.IV,
Vellore.

+1cc to Mr.P.Krishnan, Advocate, SR.No.6296

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CA (CO)
KAK (01/03/2019)



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