

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 19.01.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Cr1. A. No.787 of 2009

A.K.Natarajan,  
Proprietor,  
M/s.Venkateswara Saw Mills & Timber,  
No.23, Doraisamy Reddy Street,  
West Tambaram,  
Chennai.

.. Appellant

Vs.

Vincent

.. Respondent

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, 1973, against the judgment dated 30.03.2007, passed in C.C.No.1158 of 2004, by the learned Judicial Magistrate, Tambaram.

For Appellant : Mr. Thiyagarajan

For Respondent : No appearance

JUDGMENT

This appeal has been filed by the appellant / complainant as against the order of acquittal, passed by the learned Judicial Magistrate, Tambaram, in C.C.No.1158 of 2004, dated 30.03.2007.

2. The appellant herein has filed a complaint on 23.07.2004 as against the respondent / accused for the offence punishable under Section 138 of the Negotiable Instruments Act. When the matter was taken up for hearing on 30.03.2007, the appellant / complainant failed to appear before the trial Court and therefore, the learned Magistrate dismissed the complaint under Section 256 Cr.P.C., by recording the non-appearance of the appellant, thereby, acquitted the accused under Section 257 Cr.P.C. Challenging the same, the present appeal came to be filed.

3. As per the orders of this Court, the appellant took private notice on the respondent and the respondent had also received the same on 24.01.2009. Proof of Service along with acknowledgment card was also filed by the appellant. The name of the respondent is also printed in the case list, but the respondent did not take any steps to appear either in person or through counsel.

4. The learned counsel for the appellant submitted that before the trial Court, the respondent / accused did not appear and a non-bailable warrant was issued as against the respondent / accused in January, 2007 and the same is still pending for execution. Such being so, due to ill health, the appellant / complainant was not present on 30.03.2007 and the learned Magistrate, without issuing any final notice, dismissed the complaint for non-appearance of the complainant. Therefore, the learned counsel prays for allowing the appeal.

5. Heard the learned counsel for the appellant and perused the documents placed on record. There is no representation for the respondent.

6. Perusal of the impugned order discloses that on 30.03.2007, the complainant was not present and therefore, the accused was acquitted under Section 256 Cr.P.C. There is no whisper as to the presence of the accused and the pendency of non-bailable warrant.

7. It is also brought to the knowledge of this Court that the appellant / complainant has filed two more complaints against the respondent / accused in C.C.No.1134 of 2003 & 163 of 2005 and the same were dismissed by the learned Magistrate, vide order dated 30.03.2007, citing the non-appearance of the complainant. On appeal, this Court, in CrI.A.Nos.786 & 790 of 2009, by orders dated 17.01.2018 & 31.07.2018, respectively, allowed the appeal, holding that the presence of the complainant is not required during the pendency of non-bailable warrant.

8. Under the above circumstances of the case and also taking into account the aforesaid orders passed by this Court, this Court is of the view that the complainant may be given one more opportunity to put forth his case. Accordingly, this appeal is allowed and the judgment passed by the learned Judicial Magistrate, Tambaram, in C.C.No.1158 of 2004, dated 30.03.2007 is quashed and the matter is remitted back to the file of the learned Judicial Magistrate, Tambaram. Considering the age of the proceedings, the learned Magistrate is directed to expedite the trial and conclude the same as expeditiously as possible.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

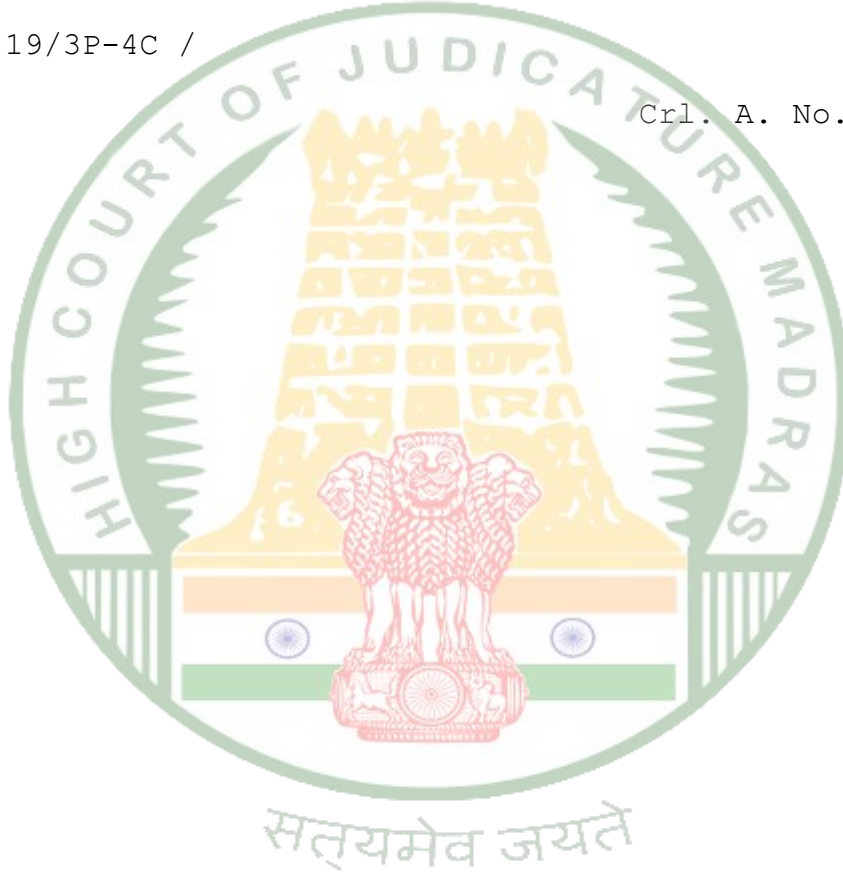
The Judicial Magistrate,  
Tambaram.

Copy To: The Section Officer, Criminal Section,  
High Court of Madras

+1 cc to M/s.T.Thiyagarajan, Advocate Sr.No.3932

AKM/23.09.19/3P-4C /

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