

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2019

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.637 of 2016

M/s.Dyber Creation

Represented by Power Holder

P.Krishnakumar

Appellant/Complainant

Vs

S.Santhosh Krishnan

Prop.V.S.International,

Prop.V.S.Innovations

No.1, 8<sup>th</sup> Cross College Road,

Tiruppur.

Respondent/Accused

Criminal Appeal filed under Section 378 of Cr.P.C.against the Order dated 21.03.2016 made in STC.No.319 of 2015 on the file of the Fast Track Court, Magistrate Level-I, Tiruppur.

For Appellant : Mr.M.Venkadeshn

For Respondent : Mr.R.Babu  
(Legal-Aid Counsel)

JUDGMENT

This appeal has been preferred by the complainant seeking to set aside the order of dismissal dated 21.03.2016 made in STC.No.319 of 2015 on the file of Fast Track Court, Magistrate Level-I, Tiruppur.

2. The brief facts of the case are as follows:

The appellant is the complainant. He had filed a complaint in S.T.C.No.319 of 2015, before the trial Court against the respondent/accused for the offence under Section 138 of the Negotiable Instruments Act. On 21.03.2016, the learned trial Judge, finding that the appellant/complainant was not present before the Court, passed the following order:

'Both Absent. No representation. Both parties are absent from 28.09.2015 without representation. Hence, Court Notice sent to both

parties on 17.02.2016 in D.No.101 & 102/16. But today also the complainant is not present to proceed with the case. Hence this Court is of opinion that the complainant is not interested to proceed with the case. Hence, this complaint is dismissed U/s.256 Cr.P.C. for non prosecution.'

Against the said order of dismissal under Section 256 of Cr.P.C for non-prosecution, the present Criminal Appeal has been filed before this Court.

3. The learned counsel appearing for the appellant/complainant would submit that on the hearing date on 21.03.2016, though the appellant had entered into the Court campus, he was unable to be present in the Court hall, since he could not identify the Court hall. He would further submit that the case was originally taken on file in C.C.No.319 of 2015 and thereafter, it had been re-numbered as S.T.C.No.319 of 2015 and transferred to the Fast Track Court, Tiruppur and that was the reason for the complainant not appearing before the Court during the calling hours. Thereby, he would seek to set aside the order of dismissal of the complaint under Section 256 of Cr.P.C.

4. In support of his contention, learned counsel appearing for the appellant/complainant relied on the judgment of the Apex Court in Associated Cement Co. Ltd., Vs. Keshvanand reported in (1998) 1 SCC 687. He would further submit that the Magistrate is not justified in acquitting the accused, unless the presence of the complainant on the date of hearing is found necessary. The discretion to acquit the accused or proceed with the trial must be exercised judicially and fairly.

5. Since there was no appearance for the respondent/accused, this Court appointed Mr.R.Babu, Legal Aid counsel to assist the Court.

6. The learned counsel for Legal Aid would submit that the learned Magistrate has carefully perused the materials and having found that there was no representation for both sides from 28.09.2015, had issued notice to both parties on 17.02.2016 in D.Nos.101 and 102 of 2016 and thereafter, had posted the matter on 21.03.2016. Since even on 21.03.2016, the appellant/complainant was not before the Court, the learned Magistrate coming to a conclusion and arriving at a opinion that the appellant/complainant is not interested to proceed with the case, had dismissed the complaint under Section 256 of Cr.P.C. for non-prosecution. He would further submit that the trial Court had found that the appellant/complainant was not present from 28.09.2015 and after giving sufficient opportunity, has dismissed the complaint after putting the parties on notice. In

(1998) 1 SCC 687 [Associated Cement Co. Ltd., Vs. Keshvanand], the Apex Court has held that the discretion to acquit the accused or proceed with the trial must be exercised judicially and fairly and the trial Court has dismissed the complaint only after putting the parties on notice.

7. In the case on hand, in the opinion of this Court, the trial Court after having issued notice to the complainant for his appearance and having found that the appellant was not present, despite the notice, had come to the conclusion that the complainant was not interested in proceeding with the case and thereby, dismissed the complaint under Section 256 of Cr.P.C. for non-prosecution. In the opinion of this Court, the trial Judge has exercised his discretion to acquit the accused judicially and fairly.

8. In view of the above discussion, this Court does not find any infirmity or illegality in the order of dismissal passed by the learned trial Judge under Section 256 of Cr.P.C. for non-prosecution warranting any interference.

9. In the result, the Criminal Appeal is dismissed and the order passed by the Fast Track Court, Magistrate Level-I, Tiruppur in STC.No.319 of 2015 dated 21.03.2016 is confirmed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssn/vsm

To

1. The Judicial Magistrate,  
Fast Track Court,  
Magistrate Level-I,  
Tiruppur.

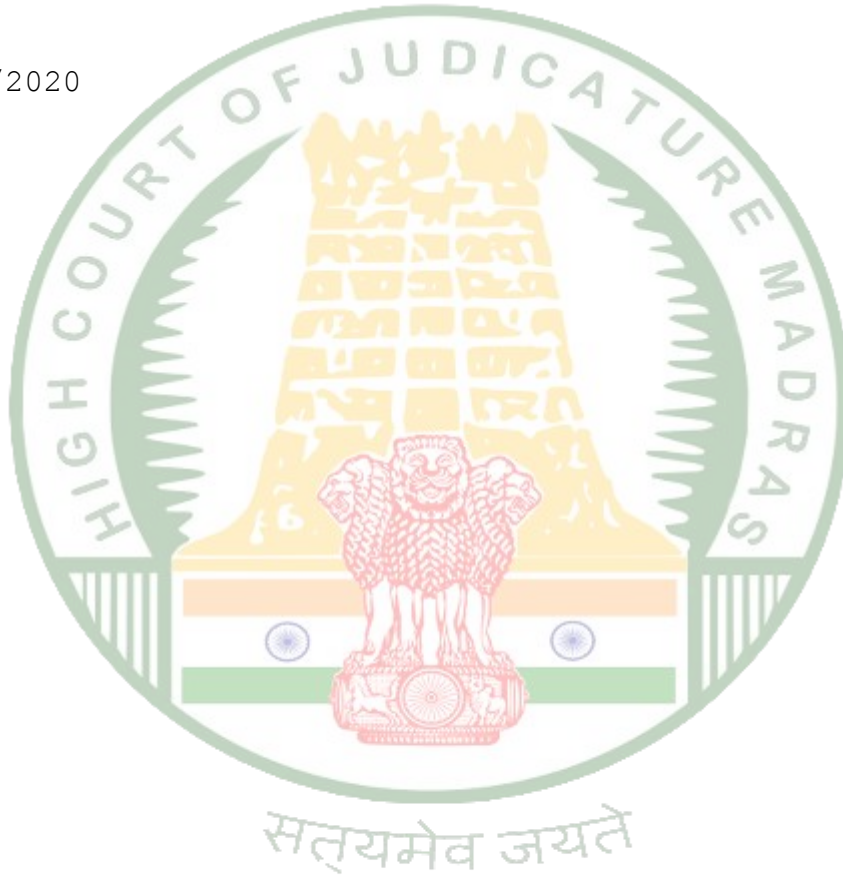
2. The Public Prosecutor,  
High Court of Madras,  
Chennai.

3.The Section Officer,  
Criminal Section (Records),  
High Court, Madras.

+1cc to Mr.R.Babu, Advocate Sr.81015  
+1cc to Mr.M.Venkadeshnan, Advocate Sr.80869

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srg 08/01/2020



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