

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.473 of 2020

S.N.Vasudevan
S/o.Nanjundan

... Petitioner

Vs.

K.Suresh
S/o.Karuppaiyan

... Respondent

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the judgment of the learned Judicial Magistrate, Fast Track Court NO.1, at Magistrate Level, Coimbatore made in C.C.No.266 of 2019 dated 18.02.2020 acquitting the accused / respondent for the offence punishable under Section 138 of the Negotiable Instruments Act and convict him for the said offence.

For Petitioner : Ms.R.Priya Kumar

J U D G M E N T

The appellant / complainant has filed a private complaint against the respondent for an offence under Section 138 of the Negotiable Instruments Act, in C.C.No.266 of 2019 before the Judicial Magistrate, Fast Track Court No.1, at Magistrate Level, Coimbatore, dated 18.02.2020.

2. The contention of the learned counsel for the petitioner is that on 18.02.2020 neither the appellant nor his counsel appeared before the trial Court, due to noting of the date wrongly as 28.02.2020. The trial Court, by order dated 18.02.2020 had dismissed the complaint under Section 256 Cr.P.C. Against which, the present appeal has been filed.

3. Learned counsel for the petitioner further submitted that the case was initially listed on 09.07.2019. On that day, complainant was present and summons taken to the respondent was awaited. Hence, the case was adjourned to 26.08.2019. On

26.08.2019, both the complainant as well as the respondent / accused had appeared. Learned counsel for the respondent has entered appearance and case was posted for trial on 09.10.2019. On 09.10.2019 complainant was present. No representation for the accused and the case was simply adjourned to 10.12.2019. On 10.12.2019 complainant was present and accused was absent. Petition under Section 317 Cr.P.C was allowed and the case was listed on 18.02.2020. As submitted earlier, on 10.12.2019, the petitioner counsel had wrongly noted the date as 28.02.2020 instead of 18.02.2020 and that is the reason for their non-appearance on 18.02.2020. The trial Court, without considering the earlier adjudication, had dismissed the petition for non appearance of the complainant and his counsel for one hearing.

4. Considering the submissions and all the equated adjudications produced, this Court is of the view that the trial Court ought not to have dismissed the complaint under Section 256 Cr.P.C when there is nothing to show that the complaint, which is of the year 2019, has been kept pending without any progress, due to the complainant's non co-operation. The complainant was absent for only one hearing. In view of the same, the order of the trial Court is set aside.

5. Learned counsel for the petitioner submits that on the next hearing he will file an affidavit and complete the evidence on his side positively.

6. Accordingly, this Criminal Appeal is allowed. The trial Court is directed to take the complainant's case in C.C.No.266 of 2019 on file and issue summons to the respondent, ensure the presence of the respondent / accused and complete the trial within a period of three months from the date of receipt of a copy of this order.

सत्यमेव जयते

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

bri

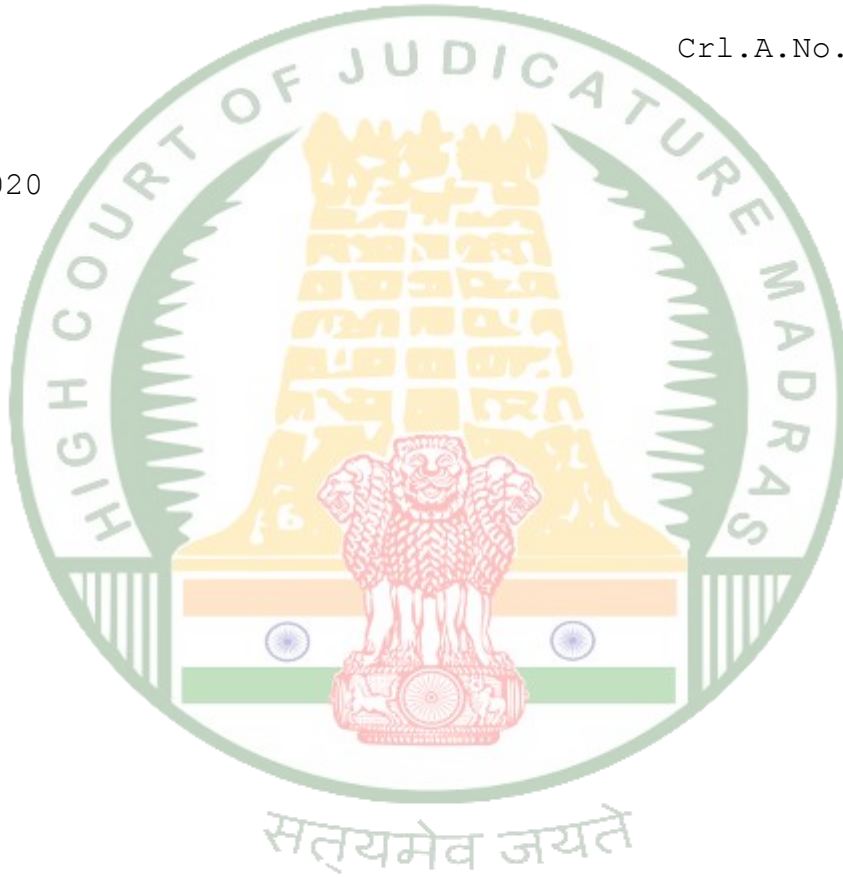
To

The Judicial Magistrate,
Fast Track Court No.1,
Magistrate Level,
Coimbatore.

Copy to
The Section Officer
Criminal section
High Court Madras

Cr1.A.No.473 of 2020

mg(co)
aa21/12/2020



WEB COPY