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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2021

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

Crl.Appeal No.414 of 2016

M.Marutha Durai

...Appellant/complainant

Vs

T.P.Palanivelu

... Respondent/accused

Appeal filed under Section 378 of Criminal Procedure Code to set aside the order of acquittal passed by the learned District Munsif cum Judicial Magistrate, Sriperumbudur in STC No.958 of 2015 dated 22.07.2015.

For Appellant : Mr.A.P.Sathya Murthy

For Respondent : No appearance

JUDGMENT

This appeal is directed against the judgment passed by the learned District Munsif cum Judicial Magistrate, Sriperumbudur dated 22.07.2015 in STC No.958 of 2014.

The brief facts of the case is as follows

The appellant is the complainant. According to the appellant/complainant, he has filed a complaint under Section 138 of the Negotiable Instruments Act against the respondent/accused on the ground that when the cheque issued by the respondent/accused in discharge of his liability was presented for encashment, it was returned dishonoured and the same was intimated to the respondent through a legal notice, by giving him fifteen days time for repayment of the cheque amount. However, even after the receipt of the legal notice, the respondent/accused has failed to repay the amount. Therefore, the appellant/complainant has preferred a complaint under Section 138 of the Negotiable Instruments Act and the same was numbered as STC No.958 of 2014 and sworn statement was taken from the complainant and summons were also issued and the same was served on the respondent/accused. After receipt of the summons, the respondent/accused appeared before the trial Court and received copies. Statement of the accused was also recorded



and he denied the charges.

2. The case was posted for trial on 22.07.2015. On that date, complainant was unable to appear before the Court as he was suffering from jaundice. Therefore, the case was dismissed for default. Aggrieved over the same, the complainant has preferred the present appeal.

3. Heard the learned counsel for the appellant/complainant.

4. When the matter was taken up before the trial Court on 22.07.2015, none appeared for the complainant either by himself or through a counsel. Therefore, the following order was passed:-

"Complainant absent. No representation.
Accused present. Complaint is dismissed for
default. Accused is acquitted."

5. On a perusal of the record, it appears that when the matter was taken up before the trial Court, the complainant was absent and due to his non-appearance, the complaint was dismissed. However, the complainant submits that his non-appearance before the trial Court is neither wilful nor wanton, but he was suffering from jaundice.

6. Today, when the matter is taken up for hearing, none appeared for the respondent/accused. Notice is served on the respondent and respondent's counsel has also entered appearance. When the matter is taken up at 11.00 a.m, none appeared for the respondent and therefore, it was passed over, and when the matter was taken up again at 11.30 a.m, none appeared for the respondent. Even when the matter was taken up on 29.06.2021, there was no representation for the respondent.

7. In the present case, the Court below dismissed the case for non-appearance of the complainant. But this Court is of the view that the grievance of the complainant has to be decided after hearing both the parties by letting in evidence.

8. Therefore, this Court is inclined to set aside the judgment passed by the learned District Munsif cum Judicial Magistrate, Sriperumbudur, in STC No.958 of 2014 and remand the matter to the Court below for fresh consideration.

9. The complaint is of the year 2014. Therefore, this Court directs the Court below to dispose of the case in STC No.958 of 2014 within a period of four months from the date of receipt of a copy of this order.



10. In the result, the appeal is allowed and the judgment passed by the learned District Munsif cum Judicial Magistrate, Sriperumbudur in STC No.958 of 2014 is set aside.

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Sd/-
Assistant Registrar(CO-III)

//True Copy//

Sub Assistant Registrar

sr

To:

The Principal District Munsif-cum-Judicial Magistrate,
Sriperumbudur

Crl.Appeal No.414 of 2016

PPA(CO)
CT(18/08/2021)