



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.A.NO.359 OF 2022

D.Carounagarane

...Appellant

Versus

Sunraj Nadar

...Respondent

Prayer : Criminal Appeal filed under Section 378(2)(b) of Criminal Procedure Code, to set aside the order, dated 04.12.2021, made in C.C.No.4185 of 2016 on the file of the learned XX Metropolitan Magistrate, Allikulam Complex, Chennai.

For Appellant : Mr.A.E.Ravichandran

For Respondent : No Appearance

JUDGMENT

This Criminal Appeal No.359 of 2022 is filed as against the order, dated 04.12.2021, whereby, the complaint filed by the petitioner under Section 200 of the Code of Criminal Procedure, complaining an offence under Section 138 of the Negotiable Instruments Act was dismissed on account of the absence of the complainant.

2. The learned Counsel for the complainant would submit that as a matter of fact, N.B.W was pending against the accused and under these circumstances, the complainant was unable to reach Court within time and therefore, the default. He would submit that default was neither willful nor wanton. As a matter of fact, the final notice, as mentioned in the impugned order, was not served on the complainant.

3. Even though notice was ordered, it may be seen from the affidavit of service, the respondent/accused is evading the notice and even after intimation, he did not claim the notice and hence, the notice has been returned as unclaimed and therefore, the service is treated as complete. As a matter of fact, there was a warrant pending against the respondent before the lower Court.



4. Considering the overall facts and circumstances of the case, interest of justice would be served only if the complainant is given one more opportunity to prosecute the complainant and accordingly, the Criminal Appeal stands allowed on the following terms:-

(i) The order of the learned XX Metropolitan Magistrate, Allikulam Complex, Chennai in C.C.No.4185 of 2016, dated 04.12.2021 is set aside and C.C.No.4185 of 2016 is restored to the file of the learned Magistrate and the proceedings to be continued in accordance with law;

(ii) Considering the old nature of the case, the complainant is directed to co-operate with the Trial Court by being present for all necessary hearings or being represented by a learned Counsel;

(iii) The Trial Court is directed to dispose off the case on merits in accordance with law, in any event, not later than six months from the date of receipt of the copy of this order.

Sd/-  
Deputy Registrar(CS)

// True Copy //

Sub Assistant Registrar

grs

To

The XX Metropolitan Magistrate,  
Allikulam Complex,  
Chennai.

Copy To

The Section Officer,  
Criminal Section,  
High Court, Madras.

+1cc to M/s.A.E.Ravichandran, Advocate SR.No.32194

Crl.A.No.359 of 2022

BP(CO)  
RVM(09/06/2022)