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CRL.A.No.198 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2023

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.A.No.198 of 2015

M/s.Balaji Oil Industries (P) Ltd.,
by its Manager Feroze,
No.39, 2nd Main Road,
Sipcot Industrial Complex,
Ranipet.

..

Appellant/complainant

Versus

A/Srinivasa Babu
Propertier of Srinu Mills,
Panrutti.

...

Respondent/accused.

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure to set aside the judgment made in S.T.C.No.1588 of 2011 dated 26.12.2014 on the file of the District Munsif Ranipet, Vellore District (Conferment of Criminal Jurisdiction) and restore.

For Appellant : Mr.K.Myilsamy

For Respondent : No appearance



JUDGEMENT

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The appeal has been preferred to challenge the impugned judgment of acquittal dated 26.12.2014 made in STC.No.1588 of 2011 on the file of the learned District Munsif Ranipet, Vellore District.

2.The appellant is the complainant who have filed the complaint against the respondent for the offence under Sec.138 of Negotiable Instruments Act-1881. Since the respondent / accused did not make his appearance before the trial Court, Non Bailable Warrant was issued and it was pending for a long time. But when the matter was posted on 28.10.2013, 21.02.2014 and 20.06.2014, the complainant was also not present and hence, the complaint was dismissed for default and the accused was acquitted. Consequently the Non Bailable Warrant was recalled and the accused was acquitted.

3.Heard the submission made by the learned counsel for the appellant and perused the materials available on record. Though a legal aid counsel has been appointed for the respondent, however she is not present today.

4.The learned counsel for the appellant submitted that it was a case of the non appearance of the accused, the case could not be progressed and the petitioner without knowing the stage of the case remained absent and the



order of the acquittal has been passed not on merits. The learned counsel for the appellant further submitted that only when the above judgment is set aside, the appellant can have an opportunity to contest the case on merits.

5.The records would show that the case was filed in the year 2011 and the impugned cheque is said to have been issued by the respondent for a sum of Rs.14,05,300/-. Due to non appearance of the respondent /accused, the Non Bailable Warrant was issued but the same remained un-executed from the year 2013 onwards.

6.The learned trial Judge without directing the jurisdiction police to execute the Non Bailable Warrant had chosen to dismiss the complaint for default of the complainant to make his appearance. Even if the complainant made his appearance when the Non Bailable Warrant was pending against the accused, the case could not have got progressed and the complainant could not have been examined as a witness. Because of the default on the part of the respondent /accused, the appellant /complainant was careless and he did not appear before the Court. However the appellant /complainant could have requested the court through his counsel to get the Non Bailable Warrant executed through the jurisdictional police. Since the absence of the



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complainant is not willful and the circumstances of the case does not warrant dismissal for default on the part of the appellant, I feel an opportunity should be given to him to contest the case on merits.

With the above stated reasons, this Criminal Appeal is **allowed** and the order of the learned District Munsif, Ranipet, Vellore District dated 26.12.2014 made in STC.No.1588 of 2011 is set aside. The learned trial Judge is directed to issue fresh Non Bailable Warrant to secure the accused with direction to the jurisdictional police station to secure and produce the accused before the Court.

30.01.2023

Index: Yes/No
jrs



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To:

1. The District Munsif Ranipet,
Vellore District.
2. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

jrs

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