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Crl.A.No.777 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.A.No.777 of 2023

M/s.R.R.G.Chickens,
Represented by its Managing Partner
K.Mani,
1/19, New Market,
Udhagamandalam

... Appellant

Vs.

1. M/s.V.K.V.Broilers,
Represented by its Authorised Signatories,
47, Narayanasamy Layout,
Ondipudur,
Coimbatore - 641 016.

2. P.Vadivel,
Partner of M/s.V.K.V.Broilers

3. P.Vasu

... Respondents

Prayer : Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the order of acquittal, dated 10.01.2023 made in S.T.C.No.651 of 2020 on the file of the learned Judicial Magistrate, Udhagamandalam by allowing this appeal.

For Appellant : Ms.R.Vigneswari for
Mr.M.Guruprasad

For Respondents : Mr.H.Deivasigamani



Crl.A.No.777 of 2023

WEB COPY

J U D G M E N T

Challenging the orders dated 10.01.2023 passed by the Judicial

Magistrate, Udhagamandalam in STC No.651 of 2020, the present Criminal Appeal has been preferred.

2. The appellant is the complainant and he filed a private complaint under Section 200 of Cr.P.C., for the offence punishable under Section 138 of the Negotiable Instruments Act against the respondents/accused in S.T.C.No.651 of 2020. Since the appellant / complainant was absent on 10.01.2023, the learned Judicial Magistrate, dismissed the complaint for non appearance of the complainant and the accused was acquitted.

3. Ms.R.Vigneswari, learned counsel for the appellant contended that the 3rd respondent/accused no.3 filed a Criminal Original Petition under Section 482 of Cr.P.C., before this Court in Crl.O.P.No.4190 of 2022 to quash the entire proceedings in S.T.C.No.651 of 2020 in which an order of interim stay was granted by this Court on 21.02.2022. It is also contended by the learned counsel for the appellant that the interim order of stay was extended from time to



time, till the Criminal Original petition was dismissed.

4. Since the appellant / complainant was of the opinion that there is an order of stay granted by this Court, he did not appear before the trial Court and according to the complainant, he was absent only on three hearings. However, the complaint was dismissed for non prosecution by the learned Judicial Magistrate, Udthagamandalam.

5. Per contra, the learned counsel appearing for the respondents/accused contended that the complainant should have filed an application to condone his absence through his counsel. However, he did not file any such application. Hence the learned Judicial Magistrate was right in dismissing the complaint.

6. It is true that the complainant did not file any petition to condone his absence before the trial Court. However, as pointed out by the learned counsel for the appellant, through there is an order of stay granted by this Court in Cr.O.P.No.4190 of 2022, it is not known as to



Crl.A.No.777 of 2023

how the Judicial Magistrate, Udhagamandalam had proceeded with the case in S.T.C.No.651 of 2020 and dismissed the complaint on 10.01.2023. Therefore, the order passed by the Judicial Magistrate, Udhagamandalam is liable to be set aside.

7. Accordingly, the order dated 10.01.2023 passed by the learned Judicial Magistrate, Udhagamandalam is set aside. The Criminal Appeal is allowed. The Judicial Magistrate, Udhagamandalam is directed to reopen the case in S.T.C.No.651 of 2020 and dispose the case in accordance with law. However it is made clear that if the appellant / complainant is unable to appear before the trial Court, he should file appropriate application to condone his absence.

26.07.2023

Index: Yes/No
Speaking/Non-Speaking order
vum



Crl.A.No.777 of 2023

WEB COPY To

1. The Judicial Magistrate,
Udhagamandalam.
2. The Section Officer,
Criminal Section,
Madras High Court,
Chennnai.



WEB COPY



Crl.A.No.777 of 2023

R.HEMALATHA, J.

vum

Crl.A.No.777 of 2023

26.07.2023

Crl.A.No.777 of 2023



Crl.A.No.777 of 2023

R. HEMALATHA,J.

This matter is posted today under the caption "being mentioned" at the instance of the learned counsel appearing for the appellant.

2. It is contended by the learned counsel for the appellant that in Paragraph No.3 of the order, it was stated that Criminal Original Petition was dismissed. However, the said Criminal Original Petition is still pending. Therefore, prayed for appropriate correction in the said order.

3.Heard, learned counsel for the respondents.

4.In the light of the submission made by the learned counsel for the appellant, Paragraph No.3 of the order dated 26.07.2023 in Crl.A.No.777 of 2023 is modified as under :

"3.....

It is also contended by the learned counsel for the appellant that the interim order of stay was extended from time to time and the said Crl.O.P.No.4190/2022 is still pending.



Crl.A.No.777 of 2023

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4.Registry is directed to carry out the necessary corrections in the order and issue fresh order copy.

16.08.2023

mtl

R. HEMALATHA, J.



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Crl.A.No.777 of 2023

mtl

Crl.A.No.777 of 2023

16.08.2023