



Crl.A.No.1636 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.1636 of 2023

R.Karkuzhali

... Appellant/Complainant

Vs.

R.Sudhakara Reddy

... Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, 1973, to set aside the order dated 21.04.2023 made in S.T.C.No.4083 of 2022 on the file of Fast Track Court No.II, Allikulam, Egmore, Chennai and allow the above Criminal Appeal.

For Appellant : Mr.G.Saravanakumar

For Respondent : Mr.M.S.Charles

JUDGMENT

This Criminal Appeal has been filed to set aside the order dated 21.04.2023 made in S.T.C.No.4083 of 2022 on the file of Fast Track Court No.II, Allikulam, Egmore, Chennai and allow the above Criminal Appeal.



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2.The appellant as complainant has filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondent in S.T.C.No.4038 of 2022. The Trial Court, by judgment dated 21.04.2023 dismissed the complaint for non prosecution and acquitted the respondent, against which, the present appeal has been filed.

3.This Court, by order dated 18.12.2023 in Crl.O.P.No.27941 of 2023 granted leave and had given reasons for the same, which reads as follows:

“3.The contention of the petitioner is that the petitioner had been diligently prosecuting the complaint. He had also engaged an Advocate to prosecute the case. On two occasions, i.e, on 18.07.2022 and 14.10.2022, the petitioner was not present. Thereafter, he was present on 25.11.2022 and 10.02.2023. The summons is yet to be served to the respondent. The respondent has been evading to receive the same. On 10.02.2023, the case was adjourned to 21.04.2023 but the petitioner heard that the case was adjourned to 25.04.2023, hence, he could not appear on 21.04.2023. For this reason, the



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complaint was dismissed under Section 256 Cr.P.C.

4.The further contention of the petitioner is that the accused is yet to appear before the Lower Court. The complaint was not dismissed on merits but on technical ground it was dismissed for non appearance of the petitioner/complainant.

5.It is seen from the petitioner's submission that prior to 21.04.2023, the petitioner appeared before the Trial Court on 25.11.2022 and 10.02.2023 and in the impugned order it has been recorded that the petitioner absenting himself continuously for several hearings, which is not correct. Substantial justice can be done only after full-fledged trial and not by short circuiting of dismissal of the complaint for non appearance. In this case, the petitioner, previously appeared on two occasions and there is no continuous absenteeism. The respondent is yet to appear before the Lower Court.

6.Finding reason and force in the petitioner's submission, this Court is inclined to grant leave. Accordingly, leave is granted.”

4.It is seen that the respondent is yet to respond to the notice and appear before the Trial Court. Since the respondent so far not appeared before the Trial Court in S.T.C.No.4038 of 2022, no prejudice would be caused to the respondent in the event of restoring the complaint. Hence,



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notice to the respondent is dispensed with.

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5.In view of the above, the impugned order dated 21.04.2023 passed by the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore @ Allikulam, Chennai is set aside and the complaint in S.T.C.No.4038 of 2022 is restored on the file of Fast Track Court No.II, Egmore @ Allikulam, Chennai. Accordingly, the Criminal Appeal is allowed.

21.12.2023

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Internet: Yes/No
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To

1.The Metropolitan Magistrate,
Fast Track Court No.II,
Egmore @ Allikulam, Chennai.

2.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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