



Crl.A.No.1322 of 2022

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

CORAM

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

Crl.A.No.1322 of 2022

M/s.Patanjali Chikisalaya,
Proprietor, Mr.Santhosh Kumar Lath,
Rep by its Power of Attorney,
Sujith Kumar.G
B10, Old No.305, New No.162,
Mahadevan Apartment,
TTK Road, Alwarpet,
Chennai - 600 018.

... Appellant

Vs.

M/s.Sri Saravana Agency,
Rep. by its Proprietor,
V.R.Ramesh,
Plot No.10, Phase II,
Virndavan Nagar,
Irulipattu Alinjivakkam,
Tiruvallur - 600 067.

... Respondent

Prayer : Criminal Appeal filed under Section 378 Cr.P.C. to set aside the dismissal order dated 08.11.2022 passed in C.C.No.2360 of 2021 on the file of Fast Track Court - II, Metropolitan Magistrate Allikulam Complex, Chennai.



CrI.A.No.1322 of 2022

WEB COPY

For Appellant : Mr.Aravind Subramaniam, Senior Counsel
Assisted by Mr.M.Ajith Kumar

J U D G M E N T

The present criminal revision petition is directed against the order in C.C.No.2360/2021 dated 08.11.2022 passed by the Fast Track Court-II, Metropolitan Magistrate, Allikulam Complex, Chennai. By the impugned order, the learned trial judge dismissed the complaint filed by the appellant herein under Section 138 of N.I.Act against the respondent/accused under Section 256 (1) Cr.P.C since the complainant was not present on the day of hearing.

2.Even though notice was served on the respondent/accused and his name is also printed in the cause list, there is no representation on behalf of the respondent/accused.

3.Heard Mr.Aravind Subramaniam learned Senior Counsel assisted by Mr.M.Ajith Kumar, learned counsel for the revision



Crl.A.No.1322 of 2022

WEB COPY petitioner/complainant.

4.The learned Senior counsel for the revision petitioner would contend that the complainant was absent for only one hearing and that the case was pending from the year 2021. He relied on the decision in ***BLS Infrastructure Limited vs. Rajwant Singh and Others*** in ***Crl.A.Nos.657-664/2023 (Arising out of SLP (Criminal) Nos.867-874/2020)*** wherein in Paragraph No.12 it has been held thus:

“12.....

16.What was the purpose of including a provision like Section 247 in the old Code (or Section 256 in the new code). It affords some deterrence against dilatory tactics on the part of a complainant who set the law in motion through his complaint. An accused who is per force to attend the court on all posting days can be put to much harassment by a complainant if he does not turn up to the court on occasions when his presence is necessary. The section, therefore, affords protection to an Accused against such tactics of the complainant. But that does not mean if the complainant is absent, the court has a duty to acquit the Accused in invitum. After observing as above, it was held that where the complainant had already been examined as a witness



CrI.A.No.1322 of 2022

WEB COPY

in the case, it would not be appropriate for the court to pass an order of acquittal merely on non-appearance of the complainant. Thus, the order of acquittal was set-aside and it was directed that the prosecution would proceed from the stage where it reached before the order of acquittal was passed.”

5. It is seen from the records that the sworn statement of the complainant was recorded and the accused was issued summons. Merely because the complainant was absent on 08.11.2022, the learned Metropolitan Magistrate, FTC-II, Alikulam Complex, Chennai had dismissed the complaint. The complainant had also pressed into service two cheques and the amount to be paid by the respondent is more than Rs.2,00,000/-. In these circumstances, the case is remitted back to the file of the learned Metropolitan Magistrate and he is directed to take the case on file to proceed further and conclude the trial within a period of six months from the date of receipt of a copy of this order.



Crl.A.No.1322 of 2022

WEB COPY

6. Accordingly, the Criminal Appeal is disposed of. No costs.

06.07.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



WEB COPY



Crl.A.No.1322 of 2022

R. HEMALATHA, J.
mtl

To

- 1.The Fast Track Court - II, Metropolitan Magistrate Allikulam Complex, Chennai.
- 2.The Section Officer, Criminal Section, High Court, Madras.

Crl.A.No.1322 of 2022

06.07.2023