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Crl.A.No.351/2023

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Dated : 03.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.A.No.351 of 2023

Devaraj

.. Petitioner

Vs.

T. Santhi

.. Respondent

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C. to set aside the order passed in S.T.C.No.813 of 2018 on the file of the Judicial Magistrate No.1, Sankari on 02.09.2021 by allowing the present Criminal Appeal.

For Petitioner

: Mr.T.N. Ranges Kanna

For Respondent

: Mr. J. Prithvi

ORDER

The petitioner has come forward with this Criminal Appeal challenging the order of dismissal of complaint in STC.No.813 of 2019 by the Judicial Magistrate No.1, Sankari on 02.09.2021.



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2. The learned counsel for the petitioner submitted that the petitioner is a complainant and the respondent is accused in STC.No.813 of 2018 on the file of Judicial Magistrate I, Sankari. The petitioner filed a complaint against the respondent for the offence under section 138 of Negotiable Instruments Act. The Judicial Magistrate dismissed the said complaint under section 256 Cr.P.C., on 02.09.2021 for non prosecution on the ground that the petitioner did not appear before the court below inspite of ample opportunities given and not adduced evidence on his side and thereby acquitted the accused. He further submitted that the non appearance of the petitioner before the court below is neither wilful nor wanton, but due to the reason that the petitioner underwent treatment of PTCA with stent to PLV on 20.09.2021 and after discharged from hospital, he was under utmost care in his house with medical support, so, he was not able to contact his counsel. Thus he prayed for allowing the criminal appeal and to restore the complaint on the file of court below.

3. The learned counsel for the respondent submitted that the complainant appeared only four times before the court below and did not prosecute the case for several hearings. Therefore, the trial court



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dismissed the case for default.

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4. Heard both sides and perused the impugned order.

5. On perusal of records, the fact reveals that the petitioner is the complainant and respondent is accused in STC.No.813 of 2018 on the file of the Judicial Magistrate No.1, Sankari. The complainant filed a complaint for dishonour of cheque against the respondent/accused for the offence punishable under section 138 of Negotiable Instruments Act. On 02.09.2021, the learned Magistrate dismissed the complaint under section 256 Cr.P.C., for non appearance and not adducing any evidence on his side and acquitted the accused. This court is of the view that the complaint was not disposed of on merits. Therefore, in order to give an opportunity to the complainant, the impugned order is hereby set aside and the complaint is restored to the file of Judicial Magistrate No.I., who, shall pass orders on the same on merits and in accordance with law after giving opportunity to both parties within a period of four months from the date of receipt of a copy of this order.

6. In the result,

- ♦ the Criminal Appeal is allowed and the impugned order is set



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aside.

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- ◆ The complaint filed in STC.No.813 of 2018 on the file of Judicial Magistrate No.1, Sankari is restored.
- ◆ The trial court is directed to give an opportunity to both parties and dispose of the complaint on merits and in accordance with law within a period of four months from the date of receipt of a copy of this order.

03.04.2023

Index :yes/no
Internet:yes/no
msr

To

The Judicial Magistrate No.1, Sankari.

V. SIVAGNANAM, J.

msr



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