



Crl.A(MD)No.330 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 04.01.2023

CORAM:

THE HON'BLE MR.JUSTICE G.ILANGO VAN

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Annachamy

... Appellant/Complainant

Vs

Sivasubramanian

...Respondent /Accused

Prayer: This Criminal Appeal Case filed under Section 378(3) of Cr.P.C, to set aside the judgment and acquittal order passed by the learned Judicial Magistrate, Alangulam, dated 10.11.2021 in S.T.C.No.1624 of 2017 and restore the case on its file.

For Appellant : Mr.K.Sivabalan
for Mr.Anandan.B

For Respondent : Mr. Pinayagash.I

JUDGMENT

The appeal has been preferred against the order of acquittal in S.T.C.No. 1624 of 2017, dated 10.11.2021, by dismissing the complaint filed under Section 200 of Cr.P.C. against the respondent herein for the alleged offence



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under Section 138 of Negotiable Instrument Act.

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2. The appellant filed the private complaint which was taken cognizance in S.T.C.No.1624 of 2017, posted for cross examination of the appellant several times. In spite of several opportunities given, the appellant did not appear before the trial Court. So that, the case was dismissed by order dated 10.11.2021 and the accused was acquitted.

3. The learned counsel for the appellant would submit that the appellant regularly appeared before the trial Court, but due to pandemic situation, only for one or two hearings he could not appear and the above said order has been passed.

4. Per contra, the learned counsel for the respondent would submit that repeatedly the appellant did not appear before the trial Court from 2018. More than several opportunities were given to the appellant. So, there is no reason to interfere with the order of trial Court.



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5. Further, the learned counsel for the appellant would submit that even though the appellant was present thrice before the trial Court for the purpose of cross examination, the learned counsel for the respondent did not cross examine him. So, one more opportunity may be given to the appellant, so that the matter can be disposed on merits.

6. Further. the learned Counsel for the respondent would also rely upon the order that has been passed by this Court in Crl.A.Nos.506 and 567 of 2014 and Crl.A(MD) No.313 of 2011 dealing with similar circumstances.

7. Perusal of B Diary extract shows that right from the beginning, most of the times, because of absence of either side, the matter has been dragged on for several hearings. At one point of time, the learned counsel for the appellant had reported no instruction. So on that ground, notice was ordered to the appellant and in pursuance of the above said notice, he appeared and sought time to engage the Advocate, that was also considered by the trial Court on 26.10.2021, accordingly the matter was taken up on 10.11.2021. But the complainant did not appear before the trial Court on 10.11.2021. So, noting the conduct of the complainant, it was dismissed on 10.11.2021. So, no grievance can be expressed by the appellant with regard to the proceedings taken up by the trial



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Court. More than sufficient opportunity was given but for what reason the appellant has dragged the matter is not known. The respondent who is the accused cannot be kept under the threat of the prosecution endlessly.

8. However, considering the circumstances that the offence under Section 138 of Negotiable Instrument Act, appeal may be allowed by way of cost. So, on the considered view that the appeal can be allowed on payment of cost of Rs. 10,000/- to the respondent. The appellant must deposit Rs.10,000/- before the trial Court within 15 days from the date of receipt of copy of the order and after deposit being made, the trial Court shall restore the complaint to its file and proceed in accordance with law. The respondent who is the accused may withdraw the above said amount through proper application.

9. It is further ordered that the trial Court must fix the particular date for appearance of the appellant and respondent for the purpose of cross examination. If the appellant fails to appear on the particular date, then the order of dismissal that was passed by the trial Court will automatically restored. The trial Court concerned is directed to dispose the matter within three months of the appearance of the parties, if full trial undertaken.



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10. With the above directions, this appeal is allowed and the order of acquittal and dismissal is set aside.

04.01.2023

NCC : Yes / No

Index : Yes/No

Internet: Yes/No

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To

The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVA, J.

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