



CRL.A(MD).No. 80 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATE : 11.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Aarthi Credit,
A Registered partnership firm,
Represented by its Manager/Partner,
C.Sivasamy,
S/o.Chellappan,
No.36, Kamatchiamman Koil North Street,
Karur Town,
Karur District.

: Appellant/appellant/
Complainant

Vs.

M.Logesh Sharma

: Respondent/ Respondent/
Accused

Prayer : This Criminal Appeal is filed under Section 378(4) of CrI.P.C, to call for the records the judgment passed by the learned Principal Sessions Judge, Karur, in CrI.R.C.No.15 of 2019, dated 25.03.2021 confirming the judgment passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur, in C.C.No.176 of 2013, dated 19.12.2018 and set aside same.

For Appellant : Mr.R.Mathiyalagan

For Respondent : Mr.N.Subramani



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JUDGMENT

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This Criminal Appeal has been filed to set aside the judgment passed by the learned Principal Sessions Judge, Karur, in Crl.R.C.No.15 of 2019 dated 25.03.2021 confirming the judgment passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur, in C.C.No.176 of 2013, dated 19.12.2018.

2.1. The respondent borrowed a sum of Rs.2,50,000/- from the appellant on 13.06.2012. To discharge the said debt, he issued a cheque bearing No.005912, on 27.03.2013 drawn on State Bank of Pattiala, Karur Branch. The appellant presented the said cheque before his Banker namely, Central Bank of India, Karur Branch on 27.03.2013 and the same was returned on 27.03.2013 with an endorsement of "Funds Insufficient". Therefore, the appellant issued a statutory notice on 15.04.2013 and the same was returned with an endorsement 'Unserved' on 29.04.2013. Hence, the appellant initiated the proceedings under Section 138 Cr.P.C., before the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur. The learned Judicial Magistrate, took the case on file in C.C.No.176 of 2013.



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2.2. Since the appellant/complainant has not appeared before the trial Court neither in person nor through the counsel, the learned trial Judge has dismissed the complaint filed by the appellant/complainant and acquitted the accused by the following order dated 19.12.2018:-

“Complaint filed by the complainant M/s.Aarthi Credit, A registered partnership firm, Represented by its Managing Partner, C.Sivasamy and against the accused M.Logesh Sharma for the offence u/s.138 of of N.I.Act. 1881.

Complainant absent. No representation from the complainant counsel. The complainant has failed to appear before this Court. Hence, the complaint is dismissed u/s.256 of Cr.P.C., for default on the part of the complainant. The accused is acquitted of offence u/s.138 of N.I.Act. Bailable Warrant issued against the accused stands cancelled.”

2.3. Aggrieved over the same, the appellant filed an appeal in CrI.R.C.No.15 of 2019 before the learned Principal Sessions Judge, Karur. The learned Appellate Judge has also dismissed the appeal on 25.03.2021 on the following grounds:-

“ This is a petition filed by the appellant pleased to admit the Criminal Revision Application and call for the



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records and to set aside the dismissal order passed in C.C.No.176/2013 on the file of Fast Track Court (Judicial Magistrate Level), Karur, on 19.12.2018.

On perusal of order passed by the trial Court, the Court has dismissed the complaint and also acquitted the accused u/s 256 Cr.P., Hence, it is a case of acquitted. Under such circumstances Revision would not lie and only appeal in the remedy available for the appellant. Hence, this petition is dismissed with liberty to file an Appeal.”

3. Challenging the same, present appeal has been filed before this Court by the appellant.

4. The learned counsel for the appellant submitted that the non-appearance of the counsel was not informed to the appellant/complainant and also he has no knowledge about the absence of the counsel during the hearing. Further, in this case, according to the complainant, the respondent committed the offence under Section 138 of Negotiable Instruments Act for 'dis honour' of cheque to the tune of Rs.2,50,000/-. Hence, in the interest of justice, he requested this Court to render the decision on merits and set aside the order passed by both the trial Court and the Appellate Court.



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5. The learned counsel for the respondent submitted that the absence of the appellant/complainant before the trial Court is not *bone fide* one. He has not either represented through counsel nor appeared in person at the time of hearing of the case. Further, the case is pending from the year 2013 onwards and hence, there is no merits in the contention of the appellant. Hence, he seeks dismissal of this appeal.

6. This Court considered the rival submissions and perused the records and also the complaint.

7. According to the appellant, the respondent has issued a cheque to discharge his debt amount of Rs.2,25,000/- and the same was returned with an endorsement 'Insufficient Funds'. Hence, the appellant/complainant issued a statutory notice and even after that, the respondent has not paid the amount. Therefore, he filed a private complaint before the trial Court under Section 138 of Negotiable Instruments Act and the same was taken on file in C.C.No.176 of 2013. The summon was duly served upon the respondent. But, the respondent did not appear. Hence, bailable warrant was issued against the accused/respondent. Pending, the execution of bailable warrant, the case was posted for execution of the bailable warrant



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on 19.12.2018. On that day, the counsel for the appellant has not appeared.

Hence, the learned trial Judge has dismissed the said complaint under Section 256 Cr.P.C., and acquitted the respondent under Section 138 of Negotiable Instruments Act. From the above sequence of events, it is clear that only one hearing, the appellant and his counsel were absent. Admittedly, bailable warrant issued against the respondent was also pending. In the said circumstance, in the absence of the appellant counsel, the learned trial Judge ought to have issued notice to the appellant and provided opportunity to proceed with the case. It is not the case of the learned trial Judge that the appellant had knowledge about the hearing date and in spite of the knowledge of hearing date, he did not appear.

8. The party engages the Advocate with supreme confidence that the Advocate would look after his interest by making his appearance before the Court. He also would have paid the fees as demanded by the Advocate. Hence, the trust requires the learned Advocate to do the rest of things. But, the said Advocate has not represented. In the said circumstances, it is the duty of the Court to issue notice to the party and decide the case. It is well settled principle that the appellant party cannot suffer for the mistake committed by his counsel. In the case of absence of the counsel, the



learned trial Judge ought to have issued notice to the appellant. Without any fault on him, the case has been dismissed. It is relevant to extract the

Hon'ble Supreme Court judgments :-

i) Rafiq v. Munshilal reported in 1981 2 SCC 788

“3... However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted.”

ii) Malkiat Singh v. Joginder Singh reported in (1998) 2 SCC 206

“6.... A perusal of the record also reveals that the appellants were neither careless nor negligent in defending the suit. They had engaged a counsel and were following the proceedings. In this fact situation, the trial court, which had admittedly not issued any notice to the appellants after their counsel had reported no instructions, should have, in the interest of justice, allowed that application and proceeded in the case from the stage when the counsel reported no instructions. The appellants cannot, in the facts and circumstances of the case, be said to be at fault and they should not suffer.”

iii) The Secretary, Department of Horticulture, Chandigarh and

Another v. Raghu Raj reported in (2008) 13 SCC 395

“28. From the case law referred to above, it is clear that this Court has always insisted on advocates to appear and argue the case as and when it is called out for hearing. Failure to do so would be unfair to the client and discourteous to the court and must be severely discountenanced. At the same time, the Court has also emphasised doing justice to the cause wherein it is



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appropriate that both the parties are present before the court and they are heard. It has been noted by the Court that once a party engages a counsel, he thinks that his advocate will appear when the case will be taken up for hearing and the court calls upon the counsel to make submissions. It is keeping in view these principles that the Court does not proceed to hear the matter in absence of the counsel.”

9. In view of the above principle, the dismissal order passed by the learned trial Judge in CC.No.176 of 2013 under Section 256 Cr.P.C., and acquitting the respondent under Section 138 of Negotiable Instruments Act, is liable to be set aside and bailable warrant issued by the Court below is to be restored.

10. Accordingly, the order passed by the learned Principal Sessions Judge, Karur, in CrI.R.C.No.15 of 2019 dated 25.03.2021, confirming the judgment passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur, in C.C.No.176 of 2013, dated 19.12.2018, is hereby set aside and the Criminal Appeal is allowed with the following directions:-

i) The learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur, is directed to complete the trial in C.C.No.176 of 2013 **within a period of 6 months** from the date of receipt of a copy of this order.



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ii) The learned counsel for the appellant/complainant, who is appearing before the trial Court is strictly instructed to co-operate with the trial.

iii) The learned counsel for the respondent is directed to strictly instruct the respondent to appear before the learned trial Judge and file a petition to re-call the bailable warrant issued against him within a period of two weeks from the date of receipt of a copy of this order and the same shall positively be considered by the learned trial Judge by imposing necessary conditions.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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K.K.RAMAKRISHNAN,J.

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To

- 1.The Principal Sessions Judge,
Karur.
- 2.The Judicial Magistrate,
Fast Track Court at Magisterial Level, Karur,
- 3.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.

Order made in
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