



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.531 of 2024

M/s.Rajarajeswara Constructions,
Represented by its partner,
and power of attorney,
M.N.Sridhar
Son of Late M.S.Narayana
Having office at
Old No.6-C, New No.7-C,
Directors Colony, Kodambakkam,
Chennai-24.

... Appellant

Vs.

S.K.Sukumar
Proprietor of M/s.Star Agro Add,
No.2/893-1, Ground Floor, VIP Nagar,
8th Cross, R.M.Colony, Dindugal.

... Respondent

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C, to set aside the dismissal order of Metropolitan Magistrate FTC No1, Allikulam, Egmore, Chennai passed in CC.No.4355 of 2019 on 14.10.2022 and convict the accused for the offences under Section 138 of NI Act.

For Appellant
For Respondent

: Mr.N.Elayaraja
: Mr.Aravind Srevatsa



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JUDGMENT

The appeal has been filed seeking to quash the order of Metropolitan Magistrate FTC No1, Allikulam, Egmore, Chennai passed in CC.No.4355 of 2019 on 14.10.2022 and convict the accused for the offences under Section 138 of NI Act.

2. The facts of the case are as follows:

The petitioner is the complainant and the respondent is the accused and they are well known each other and having regular business transaction. As per the several purchase orders placed by the accused, the complainant had supplied the 20W LED Street Lights fitting of Nos.28003 for Government project to the accused worth about 5,21,90,591/- The goods had been delivered in good condition and the same was acknowledged by the accused. Thereafter, the accused paid a sum of Rs.3,40,00,000/- and not paid a sum of Rs.1,81,90,591/-. After due procedures, the petitioner has filed a private complaint under Section 138 of NI Act against the respondent. For non appearance of the respondent, the trial Court issued a Bailable Warrant



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against him on 22.07.2019 from that date as on date, the petitioner has not paid any process bata for the execution of Bailable Warrant and no effective steps taken against the accused and the complainant was continuously absent. After ful-fledged trial, the learned Judge rejected the case of the complainant by the impugned judgment. Aggrieved by the dismissal of his case, the complainant has preferred an appeal against the judgment of the learned trial judge.

3. The learned counsel appearing for the appellant vehemently argued that the learned Judge ought to have given opportunity to the complainant for filing process application and proceed the case in accordance with law. The order passed by the learned Judge is against the principal of natural justice. Due to Covid situation, the appellant could not follow the case with his counsel. Hence, the learned counsel prays to allow this appeal.

4. The learned counsel for the respondent submitted that instead of acquitting the accused as provided under Section 256 on the ground of non



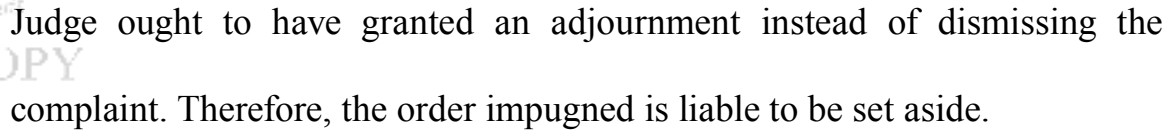
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appearance of the complainant, the said order amounts to acquittal of the accused as provided under Section 256 of Cr.P.C.

5. Heard the learned counsel for the appellant as well as the respondent and perused the materials available on record.

6. The facts of the case are not in dispute. The appellant has filed a private complaint as against the respondent before the trial Court under Section 138 of NI Act. During the trial, the respondent has not received the court summons and not appeared. Hence, the trial Court issued Bailable Warrant to the respondent. The respondent has paid process fee for the execution of the warrant and hence, the petition was dismissed and the respondent has been acquitted.

7. In such scenario, the appellant has filed the present appeal. It is general principle in law that no one can deny valuable right of the appellant for trial. The said denial for the appellant is impermissible one. The learned



9. With the above observations and directions, the criminal appeal is allowed.

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Speaking/Non speaking order

The Metropolitan Magistrate FTC No1, Allikulam, Egmore, Chennai.



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M.DHANDAPANI.J,

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