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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.431 of 2024

M/s.Shervaroys Biologicals and Organics,
Rep.by Managing Partner,
Thanikachalam

... Appellant

-Vs-

J.Anjankumar

... Respondent

PRAYER: Criminal Appeal is filed under Section 378 Cr.P.C, to set aside the order of acquittal dated 13.02.2024 made in C.C.No.520 of 2019 on the file of the Judicial Magistrate, Fast Track Court No.I @ ML, Coimbatore, by allowing the criminal appeal.

For Appellant : Mr.R.Prabakar

For Respondent : No appearance

J U D G M E N T

The Criminal Appeal has been filed against the judgment dated 13.02.2024 passed in C.C.No.520 of 2019 by the learned Judicial Magistrate, Fast Track Court No.I @ Magistrate Level, Coimbatore.



2. The case of the appellant is that the appellant filed a complaint against the respondent/accused under Section 138 of Negotiable Instruments Act for having issued a bounced cheque for a sum of Rs.6,00,000/-. The appellant/complainant examined himself as P.W.1 and the case was posted for cross-examination of PW1 and thereafter, there was no sitting on 23.08.2023 and the case was re-posted on 08.11.2023 and on that day, the appellant/complainant was absent and he has not subjected himself for cross-examination. Instead, a petition for dispensing with appearance was filed and the same was allowed on condition that the petitioner shall appear for cross-examination on 18.12.2023. However, the appellant has not appeared before the trial Court and not subjected himself for cross-examination and he was evading from cross-examination and the counsel, who was appearing before the trial Court, was also repeatedly requesting adjournment and when the matter came up for hearing, the counsel was asking the case for pass over and thereafter, when the case was called, the counsel was requesting time and the petitions were frequently filed for dispensing with the appearance of the complainant without any sufficient reason and the complainant has not subjected himself for cross-examination and was not ready to appear before the Court and thereby, the case was dismissed as



non-prosecution on 13.02.2024. Challenging the same, the present petition has been filed.

3. The learned counsel appearing for the appellant submits that the attitude of the counsel who was appearing before the trial Court was condemned by this Court, for which, orally this Court directed the counsel on record, who was appearing before the trial Court to deposit a sum of Rs.10,000/- to the credit of Bar Council of Tamil Nadu and Puducherry for the welfare of the Advocates, pursuant to which, a sum of Rs.10,000/- has been deposited and a compliance memo has also been filed before this Court and for the attitude of the counsel, the petitioner may not be punished by dismissing the complaint as non-prosecution. Hence, this Court may set aside the impugned judgment and permit the petitioner to appear before the trial Court for cross-examination of himself.

4. Though notice has been served to the respondent, no one appears on behalf of the respondent.



5. Considering the facts and circumstances of the case and the fact that due to non-appearance of the appellant, the complaint filed by the appellant was dismissed as non-prosecution on 13.02.2024, in order to give one opportunity to the appellant, this Court is inclined to set aside the impugned judgment dated 13.02.2024 passed in C.C.No.520 of 2019 by the learned Judicial Magistrate, Fast Track Court No.I @ Magistrate Level, Coimbatore and accordingly, it is set aside. The Judicial Magistrate, Fast Track Court No.I @ Magistrate Level, Coimbatore is directed to fix a date for appearance of the appellant/P.W1 for cross-examination by the respondent and on that date, the appellant shall appear before the trial Court and if the appellant fails to appear before the trial Court, the trial Court may invoke the power available under Section 256 Cr.P.C and pass appropriate orders.

6. Accordingly, this Criminal Appeal is allowed.

19.06.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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M.DHANDAPANI., J.

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To

The learned Judicial Magistrate,
Fast Track Court No.I @ ML, Coimbatore.

Crl.A.No.431 of 2024

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