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Crl.A.No.1022 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No. 1022 of 2024

L.Sebastian Babu

.. Appellant

Versus

1. John Lobo

2. Roselin K.Thomas

.. Respondents

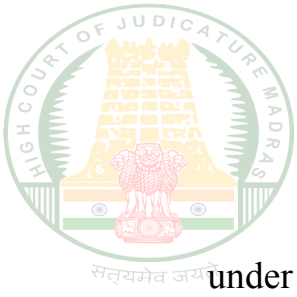
Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, 1973, to set aside the Judgment dated 04.06.2024 made in S.T.C.No.204 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court, Hosur and to restore the above complaint on filed and decide the same on merits by allowing the above Revision.

For Appellant

: Mr. G.C. Prabakaran

JUDGMENT

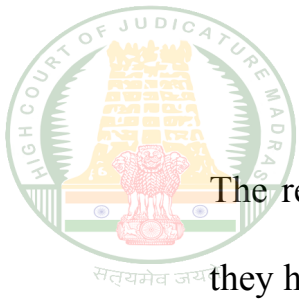
This Criminal Appeal has been filed to set aside the Judgment dated 04.06.2024 made in S.T.C.No.2024 of 2017 on the file of the Judicial Magistrate (Fast Track Court), Hosur and allow the above Criminal Appeal.



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2. The appellant, as complainant, has filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondent in S.T.C. No. 204 of 2017. The Trial Court, by judgment dated 04.06.2024 dismissed the complaint for non-prosecution and acquitted the respondent. As against the said judgment, the present appeal has been filed.

3. The contention of the appellant is that he and the first respondent entered into an agreement dated 20.09.2014 and the same was renewed on 01.06.2017. In this connection, the respondents /accused received Rs.50,00,000/- from the appellant / complainant on the date of agreement. The respondents agreed to repay the amount and therefore, he cancelled the agreement on 13.06.2016. To discharge their liability, the respondents issued five cheques for a sum of Rs.10,00,000/- each, totalling Rs.50,00,000/-. On 30.08.2017, when the above cheques were presented, they were returned on the ground "insufficient funds". Thereafter, the statutory notice issued but it was refused by the respondents hence, the complaint has been lodged by the appellant. It is further stated that the complaint pending for appearance of the respondents/ accused at the initial stage. Thereafter, the appellant filed his proof affidavit on 21.06.2022.



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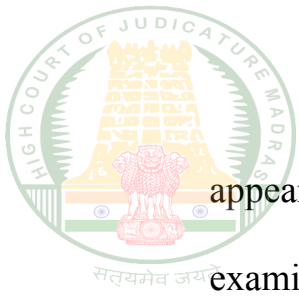
The respondents failed to cross examine the appellant. On the other hand, they have filed Crl. MP. No.3817 of 2019, calling for certain documents and even thereafter, cross examination was not conducted and the case was periodically adjourned for one reason or the other. On 26.03.2024, the respondents were directed to produce the documents like cheques, account opening form for the period of 2015 to 2017 and for the appearance of the respondents on the next hearing date i.e., 18.04.2024. On 18.04.2024, it was recorded that both the appellant / complainant and the respondents / accused are not present, Crl.M.P.No.3817 of 2019 is pending but no step was taken by the respondents/accused. Since sufficient time was given, CMP.No.3817 of 2019 was closed, directing the petitioner to appear on 03.05.2024. On 03.05.2024, the appellant counsel filed change of vakalath and he requested one more chance and hence, the case was adjourned to 04.06.2024 imposing costs of Rs.1,000/- to be paid to the respondent. On 04.06.2024, finding conditional order not complied and hence, the complaint was dismissed for non-prosecution, which is impugned herein. He further submitted that the Trial Court dismissed the complaint for the reason that the case is pending from the year 2017 and the petitioner/complainant failed to appear for cross-examination on that date



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when the defence counsel was ready for cross-examination. The trial Court failed to look into the fact that since the respondents/accused were not present and failed to produce documents, Crl.M.P.No.3817 of 2019, was closed on 18.04.2024. The respondents/accused not repaid the sum of Rs.50,00,000/- to the petitioner as agreed, against which, the complaint was filed under Section 138 of the Negotiable Instruments Act, but due to non-prosecution, the said complaint dismissed. The case of the appellant is required to be decided only after a full-fledged trial. Hence, he filed the present appeal.

4. It is seen that from the adjudication proceedings produced by the appellant that the respondents have been taking time right from the initial stage, thereafter, they filed Crl.M.P.No.3817 of 2019 and the same was closed on 18.04.2024. On 04.06.2024, the case was posted for cross examination, on that date, the appellant / complainant and the respondents / accused did not appear. It is recorded that the defence counsel with all the documents was ready for cross examination. No doubt it was recorded that the respondents are ready for cross examination and nothing more. The counsel for the appellant submits that the appellant-complainant would



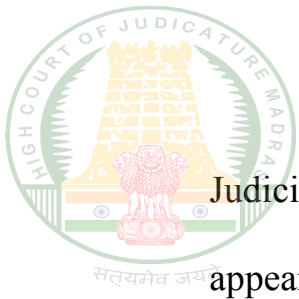
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appear before the Trial Court in future in all hearing dates, submit for cross examination and no prejudice would be caused if the case is completed within a stipulated time.

5. This Court finds that the reason given by the appellant is reasonable. Since the appellant did not comply with the conditional order dated 03.05.2024, the trial Court dismissed the case for non-prosecution, recording non-appearance of either parties. In view of the same, this Court finds that notice to the respondents not required. Accordingly, notice to the respondents are dispensed with.

6. It is seen that the complaint was dismissed on technical ground for non-appearance of the appellant and not on merits, substantial justice can be rendered only after full-fledged trial and not by short circuiting with dismissal of the complaint for non-prosecution.

7. In view of the above, the impugned order dated 04.06.2024 passed by the learned Judicial Magistrate, Fast Track Court, Hosur, is set aside and the complaint in S.T.C.No.2024 of 2017 is restored to the file of learned



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Judicial Magistrate, Fast Track Court, Hosur. The appellant is directed to appear before the trial court on or before 19.08.2024 and submit himself for cross-examination, without further delay or on any date fixed by the trial court. The case is pending from the year 2017, hence, the trial Court is directed to expedite the trial in S.T.C.No.2024 of 2017 and dispose the same, within two months from the date of receipt of a copy of this judgment. Accordingly, the Criminal Appeal is allowed.

05.08.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Internet: Yes/No

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To

1. The learned Judicial Magistrate,
Fast Track Court, Hosur
2. The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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