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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.752 of 2024

Gopala Krishnan

... Appellant

-Vs-

P.E.Gowri

... Respondent

PRAYER: Criminal Appeal is filed under Section 372 r/w. 378 Cr.P.C, to set aside the order passed in S.T.C.No.218 of 2022 on the file of the learned Judicial Magistrate No.II, Mettur, dated 21.03.2022.

For Appellant : Mr.Charles Kamalesh M.Appaji

For Respondent : Mr.B.Pachaiyappan

J U D G M E N T

The Criminal Appeal has been filed against the judgment dated 21.03.2022 passed in S.T.C.No.218 of 2022 by the learned Judicial Magistrate No.II, Mettur.



2. The learned counsel appearing for the appellant submits that the appellant filed a complaint against the respondent/accused under Section 200 Cr.P.C for the offence punishable under Sections 138 and 142 of Negotiable Instruments Act for having issued a bounced cheque for a sum of Rs.5,00,000/-, however, the said complaint was dismissed as non-prosecution on 21.03.2022 for non-appearance of the appellant before the trial Court, without providing sufficient opportunity to the appellant. Due to ill-health, the appellant has not appeared before the trial Court. Hence, this Court may set aside the impugned order and remand the matter back to the trial Court for fresh consideration.

3. The learned counsel appearing for the respondent submits that he has no objection to the submission made by the learned counsel appearing for the petitioner, however, this Court may dispense with the personal appearance of the respondent before the trial court

4. 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 21.03.2022, in order to give one opportunity to the appellant, this Court is inclined to set aside

the impugned judgment dated 21.03.2022 passed in



S.T.C.No.218 of 2020 by the learned Judicial Magistrate No.II, Mettur and accordingly, it is set aside. The matter is remanded back to the trial Court for fresh consideration. The learned Judicial Magistrate No.II, Mettur, is directed to restore S.T.C.No.218 of 2020 on file and decide the matter on merits and in accordance with law, after providing sufficient opportunity to the appellant and the respondent.

5. Though a prayer has been sought for by the learned counsel appearing for the respondent for dispensing with the personal appearance of the respondent before the trial Court, however, it is to be pointed out that the presence of the respondent cannot be dispensed with in *toto*. In such view of the matter, this Court directs that the appearance of the respondent before the trial court is dispensed with except for her appearance for the purpose of receiving copies u/s.207 and questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the respondent is necessary, the trial court, at its wisdom, shall direct her appearance on those days.

6. Accordingly, this Criminal Appeal is allowed.



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03.07.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb

To

The learned Judicial Magistrate No.II, Mettur



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M.DHANDAPANI., J.

ssb

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