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CrI.A. No.1327 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CrI.A.No.1327 of 2024

Mercury Enterprises,
Rep. by its Proprietor,
Mr.K.K.Maheswaran

... Appellant/Complainant

Vs.

Mr.K.S.Kumar

... Respondent/Accused

PRAYER: Criminal Appeal filed under Section 419 of BNSS, to call for the records of the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai-15, and set aside the order passed in C.C.No.1103 of 2021 dated 30.07.2024.

For Petitioner : Mr.R.T.Vijayaraaghavan

For Respondents : Mr.R.Sathiyamurthy

JUDGMENT

The appeal challenges the order of acquittal dated 30.07.2024 made in C.C.No.1103 of 2021 on the file of the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai-15, on the ground that the complainant was absent and that there was no valid reason for



adjourning the case.

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2. The learned counsel for the appellant would submit that the complainant was absent and was not represented by a counsel for the first time on 30.07.2024; that he was not present on 19.06.2024 and was however, represented by a learned counsel on that day; that in any case, the learned Magistrate ought not to have dismissed the complaint and acquitted the accused/respondent, without issuing a final notice to the complainant/appellant herein giving him an opportunity to appear; and relied upon the order of this Court dated 23.11.2016 made in Crl.R.C.No.368 of 2011 [*Saritha Mittal Vs. K. Jayabal*].

3. The learned counsel for the respondent *per contra* submitted that the order of the learned Magistrate does not call for any interference; that the complainant has misused the security cheque that was given in the year 2017; that due to the absence of the complainant, the case could not be proceeded with; that the accused has been facing trial since 2021; and hence there is no infirmity in the order of the trial Court.

4. Heard the submissions made by the learned counsel on either



side and perused the materials available on record.

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5. The order of the learned Magistrate does not specifically state as to how many hearings the complainant was absent. The appellant has produced 'Daily Status for 19.06.2024 from the e-Court website', which reads as follows:

“MM on leave. Complainant absent. PF. Accused absent. No representation. For appearance of complainant call on 30.07.2024.”

6. It is the case of the complainant/appellant that he had wrongly noted the date as 31.07.2024 and hence, his absence on 30.07.2024 was neither wilful nor wanton.

7. In any case, this Court is of the view that the learned Magistrate ought to have issued a final notice to the complainant/appellant, giving him an opportunity to represent his case on merits, and thereafter decided the case on merits. This Court in similar circumstances in *Saritha Mittal's case* [cited supra] had held as follows:

“14. A close scanning of case records would reveal that there is no material to sustain the premises of the learned Magistrate that a final notice has been served upon the complainant. That apart, in the facts and circumstances of the case, the learned Magistrate could have given an



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opportunity to the complainant.”

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8. In such a view of the matter, this Court is of the view that one more opportunity can be given to the complainant to establish his case on merits. Accordingly, the order dated 30.07.2024 made in C.C.No.1103 of 2021 on the file of the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai-15, dismissing the complaint is set aside and the learned Magistrate is directed to decide C.C.No.1103 of 2021, on merits.

9. Considering the fact that the case is pending from 2021, the learned Magistrate may expedite the trial and dispose of the same, preferably within a period of three months from the date of receipt of a copy of this order.

10. With the above observation, the Criminal Appeal stands allowed.

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Index: Yes/No

Speaking/Non-speaking order

Neutral citation: Yes/No.

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SUNDER MOHAN, J.

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To

The Metropolitan Magistrate,
Fast Track Court No.III,
Saidapet, Chennai-15,

Crl.A.No.1327 of 2024

03.12.2024