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Crl.A.No.1333 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.1333 of 2024

D.Sethuraman

...

Appellant

Vs.

C.Krithika

Proprietrix – Shree Lalitha Oil Company

Meenakarai Road,

Opp. To Kunjampalayam Pirivu

Zaminuthukuli, Pollachi

Coimbatore – 642 004.

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Respondent

Prayer: Criminal Appeal filed under Section 378 (4) Cr.P.C. / 419 of BNSS Act praying to call for the records and set aside the judgment of acquittal u/s.256 Cr.P.C. dated 21.08.2024 passed in STC.No.293/2024 on the file of the Fast Track Court-I, Magisterial Level, Coimbatore for an offence under Section 138 of N.T. Act.

For Appellant : Mr.C.Arunkumar

For Respondent : Mr.B.Hari Krishnan



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JUDGMENT

The appeal challenges the dismissal of the petitioner's complaint for non-prosecution under Section 256 of Cr.P.C.

2.1 The petitioner had filed a complaint under Section 138 of Negotiable Instruments Act alleging that the respondent had issued a cheque for Rs.21,00,000/- which when presented for collection was returned for the reason “insufficient funds” and inspite of statutory notice, the petitioner did not make any payment.

2.2 The complaint was filed in the year 2022. On 14.03.2024, the respondent filed CMP No.2129 of 2024 under Section 145 (2) of Negotiable Instruments Act to examine the petitioner/PW1 and the same was allowed. Thereafter, the case was posted for cross examination on 13.05.2024, 05.07.2024 and 21.08.2024. However, the petitioner did not appear on all these three days to subject himself to cross examination and therefore the learned Magistrate dismissed the said case for non-prosecution under Section 256 Cr.P.C.,



3. The learned counsel for the petitioner would submit that the petitioner filed an application on 21.08.2024 stating that his uncle died and there were rituals at his residence and therefore he was unable to appear before the court. However, the learned Magistrate dismissed the petition. The learned counsel would further submit that non-appearance of the petitioner is due to an unavoidable circumstance and therefore, one opportunity may be given to the petitioner to prove his case before the Trial Court on merits.

4. The learned counsel for the respondent, per contra submitted that it is not on one occasion the petitioner was absent and as rightly recorded by the learned Magistrate, the petitioner had not shown any interest in the case or had obeyed the order of the court for appearance and therefore no indulgence need to be shown to the petitioner.

5. Heard the learned counsel for the petitioner as well as respondent and perused the records.

6. From the perusal of the records, it is seen that the trial was in the advanced stage and since the petitioner has not appeared and subjected



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himself for cross examination, the impugned order was passed. The petitioner has certainly not obeyed the order of the court directing him to appear before the Trial Court. However, considering the stage of the case, this Court is of the view that one more opportunity can be given to the petitioner to establish his case on merits before the Trial Court. However, it is made clear that the petitioner shall appear before the Trial Court on the date fixed for the cross examination, which shall be fixed within four weeks from the date of receipt of copy of this order, by the learned Magistrate. The learned Magistrate may thereafter conclude the proceedings, as expeditiously as possible.

7. With the above observations, this **Criminal Appeal is allowed**, setting aside the judgment of acquittal dated 21.08.2024 passed in STC.No.293/2024 by the Judicial Magistrate, Fast Track Court-I, Magisterial Level, Coimbatore.

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Index : Yes/No
Speaking Order/Non Speaking Order



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To

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The Judicial Magistrate,

Fast Track Court-I,

Magisterial Level,

Coimbatore



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SUNDER MOHAN, J.

rgr

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