



CrI.A.No.779 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

CrI.A.No.779 of 2024

Vijayakumar

...Appellant

Vs.

M/s.A.M.Enterprises,
Rep. by its Proprietrix,
A.Haripriya,
No.27/11, Muniyappa Chetty Street,
Perambur, Chennai – 600 011.
...Respondent

Criminal Appeal has been filed under Section 378 of Cr.P.C to set aside the order passed by the learned FTC-II, Metropolitan Magistrate, Chennai in C.C.No.220 of 2016 dated 14.11.2022 and restore the same on the file.

For Appellant : Mr.N.Beulah John Selvaraj

For Respondent : No Appearance



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ORDER

This Criminal Appeal has been filed to set aside the order passed by the learned FTC-II, Metropolitan Magistrate, Chennai in C.C.No.220 of 2016 dated 14.11.2022 and restore the same on the file.

2. The case of the appellant is that, the respondent obtained hand loan for a sum of Rs.10,00,000/- from the appellant in order to develop her business and to meet out her family expenditure as well. When the said sum was demanded by the appellant, the respondent had neither paid the principal nor the interest for the said sum. In order to discharge the liability, the respondent / accused had issued a cheque bearing No.077453 dated 04.11.2015 to a sum of Rs.10,00,000/- and when the said cheque was presented for collection, the same has been dishonoured with an endorsement “Funds insufficient”. Thereafter, the appellant sent a statutory notice to the respondent on 25.11.2015 calling upon the respondent / accused to make a payment of the dishonoured cheque and despite receiving the same, as the respondent has not repaid the outstanding due, the



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appellant filed a complaint under Section 200 Cr.P.C., for the offence u/s.

138 of Negotiable Instruments Act in CC.No.220 of 2016 on the file of the learned Fast Track Court – II, Metropolitan Magistrate, Chennai. While so, the trial court, without going into the merits of the case, vide impugned order dated 14.11.2022, dismissed the said complaint on the ground of non-appearance of the complainant u/s.256 of Cr.P.C by acquitting the respondent. Aggrieved by the said order of acquittal, the appellant has come up with the present appeal.

3. Learned counsel for the appellant submitted that, due to unforeseen situation, the appellant was not able to appear before the trial Court and for mere non-appearance on the part of the appellant before the trial court on a particular date, the trial court had dismissed the complaint filed by the appellant, which is per se unsustainable and the impugned order passed by the trial court is wholly erroneous, as the same was passed, without affording opportunity to the petitioner to canvass his case, which is a clear violation of principles of natural justice. He further submitted that, the petitioner is ready to examine all the witnesses within the time stipulated by



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this Court. Accordingly, he prayed for appropriate orders.

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4. Though the name of the respondent is printed in the cause list, no one appeared on his behalf. Considering the period of pendency of the appeal, the same is disposed of based on the materials available on record.

5. Heard learned counsel on either side and perused the material documents placed on record.

6. A perusal of the impugned order reveals that, no opportunity was given to the appellant and the trial court had directly discharged the accused person without hearing the appellant, which is against the principles of natural justice, as necessarily opportunity has to be given to the appellant to put forth his case.

7. In such view of the matter, the impugned order dated 14.11.2022 made in CC.No.220 of 2016 is set aside and the matter is remanded to the trial court. The appellant is directed to appear before the court on the date



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fixed and let in evidences on behalf of the complainant before the trial Court and the respondent is at liberty to cross examine the prosecution witnesses.

After production and examination of the witnesses, the trial Court after affording an opportunity of hearing to the parties is directed to dispose of the complaint filed by the appellant upon the materials placed before it within a period of four (4) months from the date of receipt of a copy of this order. Further, it is open to the trial Court to dismiss the complaint made by the appellant by invoking powers u/s.256 of Cr.P.C. if the appellant fails to appear before the trial Court on the first date fixed for hearing.

8. With the above observations and directions, this Criminal Appeal stands allowed.

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NCC : Yes/No
Index : Yes/No
Speaking order : Yes/No

To
FTC-II, Metropolitan Magistrate, Chennai

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