



CrL.A(MD).No.757 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.07.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrL.A(MD).No.757 of 2023

N.Srinivasagan

... Appellant

Vs.

V.Alagarsamy

... Respondent

PRAYER : Criminal Appeal has been filed under Section 378(2) of Cr.P.C., 1973, to call for records and set aside the order passed by the Court of learned Judicial Magistrate No.II, Sattur, Virudhunagar District in S.T.C.No. 165 of 2022 on 09.12.2022 and allow this Criminal Appeal.

For Appellant : Mr.M.Jothi Basu
For Respondent : Mr.S.Mahalakshmi

JUDGMENT

This appeal has been filed to set aside the order passed by the learned Judicial Magistrate No.II, Sattur, Virudhunagar District in S.T.C.No. 165 of 2022 on 09.12.2022 and allow this Criminal Appeal.

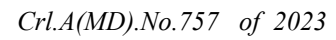


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2. The appellant is the complainant in S.T.C.No.165 of 2022. The respondent borrowed a sum of Rs.4,00,000/- from the appellant on 25.01.2020. To discharge the said debt, he issued cheque on 28.03.2021 drawn on the IDBI Bank, Sivakasi Branch. The appellant presented the cheque before his Bank and the cheque was returned with an endorsement of “Insufficient Funds”. Therefore, the appellant/complainant issued the legal notice on 15.06.2021. Even though the respondent received the same on 16.06.2021, he has not sent any reply and has not made any payment. In such circumstances, the appellant filed a complaint under Section 138 Cr.P.C., before the Judicial Magistrate No.II, Sattur, Virudhunagar District and the learned Judicial Magistrate taken the complaint on file in STC.No. 165 of 2022.

3. After receipt of the summons both the parties appeared and the case was posted for examination of the appellant/complainant on 09.12.2022. on 09.12.2022, the appellant/complainant was absent and there was no representation on the side of the accused. Therefore, the learned Judicial Magistrate No.II, Sattur dismissed the petition on the ground that





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file in S.T.C.No.165 of 2022. The petitioner has been regularly appearing before the Court without any default. The case was posted for examination of the petitioner on 09.12.2022. Inadvertently, the same was not informed by the learned counsel. In view of the said non-communication, he has not appeared on 09.12.2022. On the day, the accused has also not appeared. Considering the bonafide conduct of the appellant and as he had regularly appeared before the Court below except the said one hearing, that too because of non communication of hearing date, this Court is inclined to set aside the impugned order of the learned trial Judge on terms in order to provide the opportunity to the appellant to prove his case on merits in the interest of justice.

7. Accordingly, this Criminal Appeal is allowed with the following directions:

(i) The order passed by the learned Judicial Magistrate No.II, Sattur, Virudhunagar District in S.T.C.No.165 of 2022 dated 09.12.2022 is set aside and the complaint is to be restored. After restoration of S.T.C.No. 165 of 2022, the learned Judicial Magistrate No.II, Sattur, Virudhunagar



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District, is directed to disposed of the same within a period of six months from the date of receipt of a copy of this order.

(ii) The appellant is directed to pay a cost of Rs.10,000/- to the respondent within a period of two weeks from the date of receipt of a copy of this order and produce the necessary acknowledgement before the trial Court.

08.07.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
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To

- 1.The Judicial Magistrate No.II, Sattur,
Virudhunagar District.
- 2.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.

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K.K.RAMAKRISHNAN, J.

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