



Crl.A(MD)No.654 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No. 654 of 2023

S.Chandrasekaran

... Appellant / Complainant

Vs.

Kavitha

... Respondent / Accused

Prayer : This Appeal is filed under Section 378(4) of Cr.P.C., to call for the records to set aside the order made in S.T.C.No.1044 of 2022 by the Judicial Magistrate, Oddanchatram, dated 28.06.2023.

For appellant : Mr.D.Venkatesh

**For Respondent : Mr.P.Suresh
Legal Aid Counsel**

J U D G M E N T

This Criminal Appeal is filed to call for the records to set aside the order made in S.T.C.No.1044 of 2022 by the Judicial Magistrate, Oddanchatram, dated 28.06.2023.



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2. The facts in brief is that the respondent borrowed a sum of Rs. 10,00,000/- on 25.03.2022, from the complainant promising to repay the same within a month. Towards discharge of the liability, the accused issued a cheque dated 25.04.2022, bearing cheque No.991145, drawn on State Bank of India, Dindigul. It was presented for payment on the very same day, came to be returned due to insufficient funds and after completing the statutory formalities, proper complaint was filed. It was taken cognizance by the trial Court and summons were issued to the accused. On the date of hearing, the complainant failed to appear before the trial Court. So it was dismissed for default under Section 256 of Cr.P.C. Against which, this Criminal Appeal is preferred.

3. Along with the grounds, the appellant has produced the B-diary extract of the trial Court which shows that most of the hearings, the complainant namely the appellant herein remained absent, so also the accused. For two hearings, there is no representation for the appellant, therefore, it was dismissed for default by order dated 28.06.2023.



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4. Learned counsel for the appellant would submit that his absence before the trial Court is neither willful nor wanton. According to him, it was informed by his advocate on record that the Presiding Officer was not available, so it was frequently adjourned. B-diary extract does not indicate the above said aspect. The complainant ought to have made proper arrangement to represent him present before this Court.

5. Having failed to appear before the trial Court, it is not proper on him to blame the learned counsel on record. However, the fact that the offence alleged is under Section 138 of Negotiable Instruments Act, so one more opportunity may be given to him, ofcourse, on payment of cost to the respondent herein for the inconvenience caused to him. On that account, Rs. 1000/- was ordered to be paid by the appellant. The cost was also paid today(30.10.2024).

6. In view of the above, this Criminal Appeal is allowed. The learned Judicial Magistrate, Oddanchatram, is directed to restore the case in S.T.C.No.1044 of 2022, on its file within a period of 15 days from the date of



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receipt of a copy of the order, after sending notice to the parties for their appearance and dispose of the same at the earliest.

30.10.2024

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

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To

1. The Judicial Magistrate, Oddanchatram.



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G.ILANGO VAN, J.

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