



Crl.A.(MD).No.255 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.09.2024

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.A.(MD).No.255 of 2013

K.Sybudeen (Proprietor),
S/o.S.Khadar Mohideen,
M/s.M.S.Steels,
No.16, Sub Jail Road,
Palakkarai,
Trichy – 620 008.

... Appellant/Complainant

Vs.

M.Mohamed Ubaithullah, (Proprietor)
S/o Mohammed Kalangiyam,
M/s.Marsukka Steels,
No.F2, Golden Castle,
Near 7th day Adventist School,
New Raja Colony,
Trichy – 620 001.

... Respondent/Respondent

Prayer: Criminal Appeal has been preferred under Section 378 Cr.P.C., to set aside the Docket Order dated 17.06.2013, made in S.T.C.No.617 of 2009 on the file of the Judicial Magistrate No.V, Tiruchirappalli and allow the appeal and punish the respondent for an offence under Section 138 of N.I.Act.

For Appellant : Mr.S.Gokulraj

For Respondent : Mr.K.Veilmuthu



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J U D G M E N T

This Criminal Appeal has been filed by the appellant to set aside the Docket Order dated 17.06.2013, made in S.T.C.No.617 of 2009 on the file of the learned Judicial Magistrate No.V, Tiruchirappalli and allow the appeal and punish the respondent for an offence under Section 138 of N.I.Act.

2.A private complaint under Section 200 Cr.P.C. was filed by the appellant herein against the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, before the trial Court on 27.04.2009.

3.The sworn statement of the complainant was recorded. Process was issued to the accused and he was questioned with regard to the allegation made in the complaint. The accused denied the allegations. That it happened on 29.06.2009. After that the case was posted for trial. For several hearings, the complainant did not appear before the trial Court. Either petition was filed to condone the absence or there was no representation at all. Finally, the case was posted to 17.06.2013 for trial. On that date also, the appellant herein failed to appear. So it was dismissed for default.



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4. Against which, he filed the present appeal before the District court and later in view of the judgment of the Full Bench, it was transferred to this Court.

5. Notice was ordered to the respondent. It was also served.

6. The learned counsel for the appellant would submit that since the trial is already commenced, the trial Court ought to have passed the judgment of acquittal on merits. It is a non speaking order. On the particular date of default, he could not contact his Advocate and so there is non communication between himself and the Advocate.

7. Even though, such a contention cannot be accepted without any valid reason, considering the fact that the amount of subject cheque is Rs.4,50,177/-, I am of the considered view that one more opportunity may be given to the appellant herein. Of course, the inconvenience caused to the accused can be appropriately compensated by way of cost. On that ground, a cost of Rs.5,000/- is ordered to be paid by the appellant to the respondent, which shall be deposited before the trial Court, within a period of **fifteen** days from the date of receipt of a copy of this order. Failing which, the order of dismissal passed by the trial Court stand confirmed without any reference



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to this Court. On such deposit being made by the appellant herein, the trial Court shall restore the complaint to file, try the same and dispose of in accordance with law and on merits as early as possible. The above said cost may be withdrawn by the accused by following due procedure.

8.With the above said directions, this criminal appeal stands allowed.

02.09.2024

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

- 1.The Judicial Magistrate No.V, Tiruchirappalli.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVA, J

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