

Crl.A(MD).No.474 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A(MD).No.474 of 2024

M.Solaimalai

... Appellant

Vs.

S.Rajendran

... Respondent

PRAYER : Criminal Appeal has been filed under Section 378 of Cr.P.C., to call for the records relating to the judgment made in C.C.No.151 of 2020 on the file of the learned Fast Track Court at Magisterial Level, Karaikudi, dated 18.08.2023 and set aside the same and allow this Criminal Appeal and convict the accused for the offence under Section 138 of the Negotiable Instrument Act 1881.

For Appellant : Mr.T.Antony Arul Raj
For Respondent : Mr.VR.Shanmuganathan



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JUDGMENT

This Criminal Appeal has been filed to call for the records relating to the judgment made in C.C.No.151 of 2020 on the file of the learned Fast Track Court at Magisterial Level, Karaikudi, dated 18.08.2023 and set aside the same.

2. The case of the appellant is that the respondent borrowed a sum of Rs.5,00,000/- from the appellant agreeing to repay the sum with 1% interest per month. He is said to have executed a promissory note on the same day in favour of the appellant. Towards repayment of such due, the respondent is said to have issued a cheque on 10.07.2020. When the complainant presented the said cheque for payment before the Canara Bank, Karaikudi Branch, the same was returned with an endorsement as “Insufficient Funds”, for which, the complainant issued legal notice. The appellant/accused received the notice and he did not repay the amount. Hence, the respondent filed a complaint under Section 138 of Negotiable Instruments Act and the same was taken on file in C.C.No.151 of 2020 before the Fast Track Court at Magisterial Level, Karaikudi.

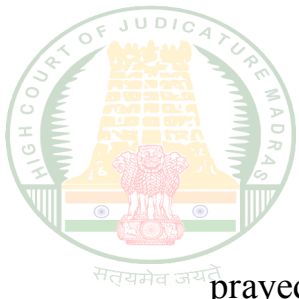


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3. The complaint was filed on 15.10.2020 and the appellant was examined as P.W.1 on 08.10.2021. Thereafter, the case was posted for cross examination of P.W.1, and the appellant was present on the said date but the respondent did not cross examine the appellant/P.W.1. Thereafter, the case was posted for questioning under Section 313 of Cr.P.C and the respondent filed a petition in Crl.M.P.No.1250 of 2023 in C.C.No.151 of 2020 seeking for cross examination of P.W.1 and the same was dismissed. Challenging the said order, the respondent approached this Court by filing Crl.O.P(MD).No. 10247 of 2023 and the same was allowed with costs. The respondent paid the costs as directed by this Court. Thereafter, before the trial Court, the case was posted on 18.08.2023 for cross examination of P.W.1/appellant, and on that date both parties did not appear. Therefore, the case case was dismissed for non-prosecution under Section 256(i) of Cr.P.C. Challenging the said order, this appeal has been filed.

4. The learned counsel for the appellant submitted that as per the direction of this Court, the appellant appeared before the trial Court for cross examination and there was no wilful absence on his side. Hence, he



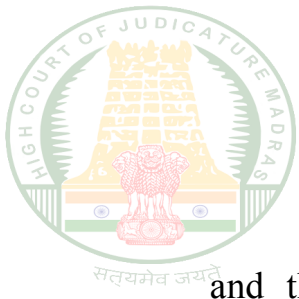
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prayed to set aside the above said order.

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5. Heard both sides and perused the materials available on record.

6.The appellant has filed complaint under Section 200 of Cr.P.C., r/w Section 142 of the Negotiable Instruments Act to take action against the respondent for his act of dishonour of the cheque issued to the appellant to discharge the liability of Rs.5,00,000/- in the year 2020. The respondent has appeared on 20.11.2000 and the case was posted for evidence on 19.04.2021, to cross examine him the case was periodically adjourned from 19.04.2021 to 10.10.2022. Therefore, the learned trial Judge closed P.W.1's evidence. Thereafter, he filed the recall petition and the same was allowed and posted the case for cross examination of P.W.1. Thereafter also the respondent has not cross examined and the case was finally posted on 23.02.2023 and there was no cross examination of P.W.1 and the evidence was closed and posted for questioning under Section 313 of Cr.P.C. Thereafter, number of adjournments were sought for defence witness and the respondent filed a petition in Crl.O.P.NO.10247 of 2023 to recall P.W.1



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and the same was allowed by this Court by order dated 13.06.2023.

Thereafter the petitioner appeared for number of hearings and he was not able to appear on 18.08.2023 and the counsel appearing for the petitioner filed the petition to dispense with the appearance and the learned trial Judge dismissed the petition and dismissed the complaint for non-prosecution under Section 256(1) of Cr.P.C., and the accused was acquitted by order dated 18.08.2023 with the following observation:

“Both absent, petition filed and dismissed. As per the Hon'ble High Court and this Court fixed the date for examination of witness today. Even then, both the complainant and the accused absent. The attitude of both the parties shows that they are not interested in proceedings with the case. Hence, this complaint is dismissed for non-prosecution under Section 256(2) of Cr.P.C., and the accused is acquitted.

6.1.In the considered opinion of this Court, the reasoning of the learned trial Judge that the complaint was not interested in prosecuting the case is not correct. He has been appearing before the trial Court from 2020 onwards and he has been participating in the trial proceedings without any fault on his side. The respondent did not cross examine and filed the petition



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to recall the witnesses and protracted the case. Therefore, the dismissal of the complaint for non-prosecution for his absence on one date of hearing without allowing the petition to dispense with his appearance is not legally correct. Therefore, this Court is inclined to set-aside the impugned acquittal order and direct to proceed the trial from the stage of the cross examination of P.W.1.

7. Accordingly, this Court allows this appeal on the following terms:

(i) Order passed in C.C.No.151 of 2020 on the file of the learned Fast Track Court at Magisterial Level, Karaikudi, dated 18.08.2023 is hereby set aside.

(ii) The Trial Court is directed to proceed with the case from the stage of cross examination of P.W.1 and the trial Court is directed to complete the trial process within a period of two months from the date of completion of cross examination of P.W.1.

(iii) Appearance of the respondent is dispensed with following conditions:



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a.The respondent is hereby directed to cross examine P.W.1 without seeking any adjournment.

b.The respondent is hereby directed to appear before the Court below to answer the questioning under Section 313 of Cr.P.C.

c.The respondent is also directed to appear before the Court below on the date of the judgment.

d.The respondent is also directed to appear an material hearing dated as directed by the learned trial Judge apart from he above said hearing dates.

26.06.2024

NCC :Yes/No

Index :Yes/No

Internet :Yes/No

tta

To

1.The Fast Track Court at Magisterial Level,
Karaikudi.

2.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

tta/sbn

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