



CrI.A.No.485 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 06.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

CrI.A.No.485 of 2012

M.Velsabareswaran

...Appellant

Vs.

N.Jothilingam

...Respondent

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to call for the records in C.C.No.116 of 2007 on the file of Judicial Magistrate No. II, Erode and set aside the order dated 03.12.2007 passed by the learned Judicial Magistrate No.II, Erode in C.C.No. 116 /2007.

For Appellant : Ms.L.Jyothi

For Respondent : Ms.N.Saranya
Legal Aid Counsel

ORDER

This appeal is filed against the judgment of the Judicial Magistrate No.II, Erode, made in C.C.No.116 of 2017 dated 03.12.2007.

2. It can be seen that on 03.12.2007, when the case being a private complaint filed under Section 200 of the Code of Criminal Procedure alleging an offence under Section 138 of the Negotiable Instruments Act, 1881, came



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up for hearing on 03.12.2007, the complainant was absent, and the Court

passed the following order:

“The case was called on for hearing today to which it had been posted. The complainant not being present either in person or by pleader or having been reported dead the accused is acquitted under Section 256, Criminal Procedure Code.”

3. It can thus be seen from the order that the Court recorded two reasons: that the complainant was either not present or reported to be dead, and accordingly passed the order. The complainant is very much alive, and it was also contended by the learned counsel appearing for the appellant that the complainant had been regularly appearing on all previous occasions and was absent only on that particular day.

4. There was no appearance on behalf of the accused, and therefore, this Court appointed *Ms.N.Saranya*, the learned Legal Aid Counsel, to represent the accused in the matter and she submits that the Trial Court rightly dismissed the complaint for default, since the complainant did not appear.

5. I have considered the rival submissions made on either side and



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perused the material records of the case.

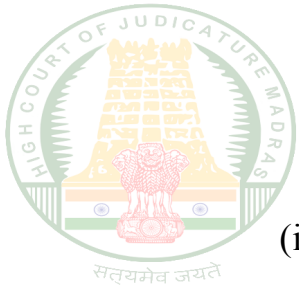
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6. It is true that the complainant was not present on that day, and therefore the Trial Court acquitted the accused. However, considering the overall facts and circumstances of the case and the submission that the complainant hitherto had regularly appeared , I am of the view that one more opportunity can be granted to the complainant.

7. In view thereof, Criminal Appeal No. 485 of 2012 shall stands allowed on the following terms:-

(i) The order dated 03.12.2007 in C.C. No. 116 of 2007 passed by the Judicial Magistrate No. II, Erode, shall stand set aside. The said C.C. No. 116 of 2007 shall stand restored to the file of the Judicial Magistrate No. II, Erode.

(ii) The next date of hearing shall be on 07.07.2025. On the said date, the complainant shall appear before the Trial Court. It is made clear that if the complainant again defaults, the Trial Court will proceed with the matter in accordance with law.



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(iii) Considering the delay that is caused due to the appeal being numbered on the file of this Court, transferred back to the District Court and again to the High Court, and thereafter taken up and disposed of only now, the Trial Court is requested to dispose of the matter as expeditiously as possible.

(iv) No costs.

06.06.2025

Neutral Citation: Yes/No
nsl

To
The Judicial Magistrate No. II, Erode.



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D.BHARATHA CHAKRAVARTHY, J.

nsI

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