



.CrI.RC.No.1369 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 09-01-2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision Case No. 1369 of 2019

V.R. Iyyappan

.. Petitioner

Versus

Moolalingam

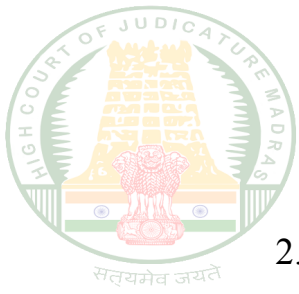
.. Respondent

Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C., to call for the entire records connected with the Judgment dated 02.07.2019 in C.A.No.14 of 2019 passed by the learned Principal District and Sessions Judge, Cuddalore dismissing the Appeal and confirming the Judgment dated 12.04.2016 passed by the learned Judicial Magistrate No.II, Chidambaram in STC.No.313 of 2013 and set aside the same.

For Petitioner : Mr. S. Sathia Chandran
For Respondent : Mr. D. Baskar

ORDER

This Criminal Revision has been filed praying to set aside the Judgment dated 02.07.2019 passed in Criminal Appeal No. 14 of 2019 by the learned Principal District and Sessions Judge, Cuddalore confirming the Judgment dated 12.04.2016 passed by the learned Judicial Magistrate No.II, Chidambaram in STC. No. 313 of 2013.

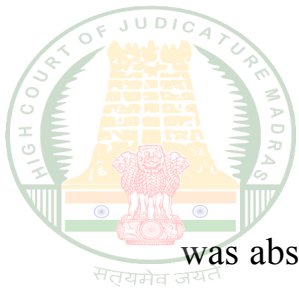


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2. The Revision Petitioner herein is the Complainant. As per the averments in the Complaint filed under Sections 138 to 142 of The Negotiable Instruments Act, 1881, during the end of month of December 2012, the Respondent herein borrowed a sum of Rs.2,00,000/- from the Revision Petitioner/Complainant and promise to repay the amount with interest. Subsequently, the Respondent/Accused issued a cheque dated 01.02.2013 bearing No. 162933 drawn on City Union Bank, Chidambaram. When the Revision Petitioner/Complainant presented the cheque for collection, it was returned with an endorsement “funds insufficient”. Therefore, the Petitioner herein/Complainant issued notice to the Respondent on 14.02.2013 and the same was received and acknowledged by the Respondent herein on 16.02.2013. However, the Respondent has neither sent any reply nor paid the cheque amount. Therefore, the Revision Petitioner/Complainant had preferred the Complaint in STC. No. 313 of 2013 before the learned Judicial Magistrate No.II, Chidambaram.

3. The learned Judicial Magistrate - II, Chidambaram examined the Complainant as P.W-1. The case was adjourned several times to enable the Accused to cross-examine the Complainant/P.W-1. In spite of several adjournments, the learned Counsel for the Accused had not cross-examined the Complainant/P.W-1. However, on the specified hearing date, the Complainant



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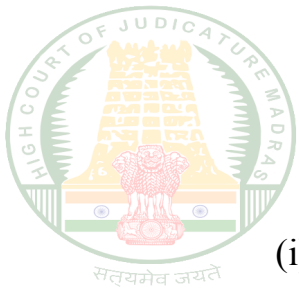
was absent. The learned Judicial Magistrate, instead of proceeding to the next stage, straight away dismissed the Complaint and acquitted the Accused by the judgment dated 12.04.2016. For ready reference, the judgment dated 12.04.2016 reads as follows:-

“A case filed U/s.138 NI Act against an Accused by Thiru. V.R. Iyappan.

2. The complainant called absent and no representation. Accused present. For the past three and a half months, no further witness produced on the side of complainant, but in this juncture, complainant absent and no representation, hence, this case is dismissed under Section 256 Cr.P.C. to avoid an unnecessary calling and to save the golden time of the Court. The Accused is acquitted.”

4. Assailing the Judgment of acquittal dated 12.04.2016, the Complainant had preferred the Appeal before the learned District Judge, Cuddalore. The District Judge, by Judgment dated 02.07.2019 dismissed the Appeal and confirmed the Judgment of acquittal passed by the trial court. Aggrieved by the same, the Complainant is before this Court.

5. The learned Counsel for the Petitioner submitted that the Courts below committed a legal error in acquitting the Respondent/Accused, merely because the Complainant was absent. Even in the absence of the Complainant, the Court below ought to have proceeded with the case for disposal on merits. In support of his contention, the learned Counsel for the Petitioner relied on the following reported rulings:



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(i) **2017-1-L.W (Crl.) 83** in the case of ***Sakthivel Vs. Subramaniyan.***

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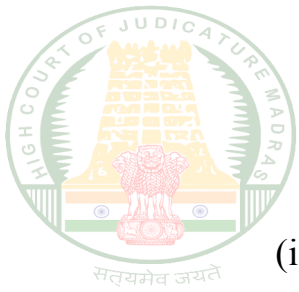
The relevant portion is extracted hereunder:

“10. It cannot be lost sight of that the criminal procedure Code does not envisage for dismissal of complaint or discharge of an Accused when the complainant had remained absent on the given date of hearing. It is not essential/necessary in every case that because of the non-appearance of the Complainant, the Complainant's case is to be thrown over board. Ordinarily, it is incumbent on the part of a Complainant to be present on the given date of hearing, even though an Accused had not appeared before the concerned Court. When date was fixed for appearance of an Accused and not for hearing, the acquittal of Accused for non-appearance of the Complainant is a grievous error. After all, the concerned Court is to see as to whether the presence of the Complainant on the given date of hearing was essential for the purpose of prosecuting the case. Even when an Advocate for the complainant was not present (absented himself) on the date of hearing, the dismissal of complaint for non-prosecution may not be a proper one.”

(ii) **2017-1-L.W (Crl.) 264** in the case of ***Rathinammal Vs.***

Manickam. The relevant portion reads as follows:

“9. In this connection, it is not out of place for this Court to make a pertinent mention that the Code of Criminal Procedure does not provide for dismissal of the 'complaint'. '*Discharge of an Accused*' when the Appellant-Complainant remains absent. Just because of the Complainant being not present, it is not necessary in all cases that the Accused shall be acquitted for the absence of parties either on a single day or for two or three occasions (especially in a case under Section 138 of N.I. Act) and the Complaint should not be dismissed in the interest of delivering substantial justice. Undoubtedly, an obligation is cast upon the Complainant to be present on the date of hearing, even if the Accused had not appeared. In a given case, where the Complainant was not present, at the time of hearing before the trial Court, it may exhibit his *laissez-faire* or *lackadaisical* attitude.”



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(iii) In the case of *M/s.BLS Infrastructure Limited vs. Rajwant Singh*

and others reported in **2023 Live Law (SC) 153** the Honourable Supreme Court had an occasion to consider an identical issue. In Para No.13 of the decision, it was held thus:-

“13Further, if the complainant had not appeared to press the application under Section 311 of the Code, the learned Magistrate could have rejected the application under Section 311 of the Code and proceeded with the case on the basis of the available evidence. We are, therefore, of the considered view that the learned Magistrate was not justified in straight away dismissing the complaint (s) and ordering acquittal of the Accused on mere non-appearance of the complainant. The High Court too failed to take notice of the aforesaid aspects. Thus, the orders impugned are liable to be set aside.”

(iv) *Crl.A.(MD).No.304 of 2011* in the case of *Kasi Pandian Vs.*

Thangadurai. The relevant portion reads as follows:

“(5) *A victim (as defined under Section 2 (wa) of the Cr.P.C does not cease to be a victim merely because he also happens to be a complainant and he can avail all the rights and privileges of a victim also and (6) The decision of the Single Judge in Selvaraj holding that the term victim found in Section 372 excludes a complainant, is not legally correct and in a given case, a complainant, who is also a victim, can avail right granted under Section 372 of Cr.P.C.?*

4. The appellant besides being a complainant he is also a victim because he suffered financial loss. It is a case instituted on a private complaint for an offence under Section 138 of Negotiable Instruments Act. In the circumstances, appeal against order of acquittal passed by a Magistrate ordinarily lies to the concerned Court of Sessions.

5. In the circumstances, ordered as under:



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(i) This Criminal Appeal is not maintainable in this Court.

(ii) The Registrar (Judicial) shall send the entire the case records to the learned Principal Sessions Judge, Tirunelveli, for disposal according to law at an early date.

(iii) The Principal Sessions Judge, Tirunelveli, after receipt of the records will fix a date and issue notice of hearing to both parties.

6. Per contra, the learned Counsel appearing for the Respondent/Accused submits that the orders passed by Courts below are well reasoned. When the Complainant, who filed the complaint did not turn up to the Court for three and half a months, there is nothing wrong on the part of the Courts below to acquit the Respondent/Accused. The prejudice that had caused to the Respondent/Accused was also taken note of by the Courts below while acquitting him of the criminal Prosecution. When an order of acquittal has been recorded by the trial Court and it was also confirmed by the appellate Court, this Court, in this Criminal Revision Case, need not interfere with the same and prayed for dismissal of the Criminal Revision Case.

7. The point for consideration that arose in this Criminal Revision Case is whether the Judgment dated 02.07.2019 in C.A.No.14 of 2019 passed by the learned Principal District and Sessions Judge, Cuddalore dismissing the Appeal and confirming the Judgment dated 12.04.2016 passed by the learned



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Judicial Magistrate No.II, Chidambaram in STC.No.313 of 2013 is to be set aside as perverse?

8. Heard the learned counsel for the revision petitioner as well as the learned counsel for the Respondent/Accused. Perused the Judgment of the learned Judicial Magistrate No.II, Chidambaram and the Judgment of the learned Principal District and Sessions Judge, Cuddalore.

9. At the outset, this Court is shocked to go through the orders passed by the Courts below, acquitting the Respondent/Accused for the simple reason that the Complainant did not turn up for more than three and half a month along with the witness, if any, to be examined on his side. Such a course adopted by the trial Court and confirmed by the Appellate Court, cannot be countenanced. Even assuming that the Complainant or the Accused did not appear, the trial Court shall either adjourn the case to a next hearing date or proceed to the next stage of the case. In the present case, if the Complainant did not turn up to the Court and no witness was produced on his side for examination, the trial Court could have closed the Complainant side evidence and proceeded to examine the defence side witness, if any. However, the trial Court committed a legal error in shutting the doors of justice to the Complainant by dismissing the complaint and acquitting the

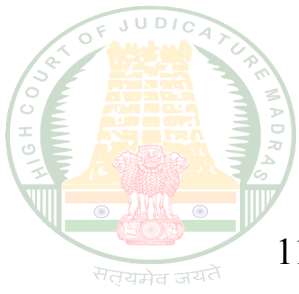


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Respondent/Accused.

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10. It is well settled that an order of acquittal passed by the Courts below should not be interfered with by this Court at the throw of a hat. At the same time, this Court is not always precluded from interfering with the Judgment of acquittal passed by the Courts below. In this case, the Order and Judgment, which are impugned in this Criminal Revision Case, were not passed by appreciating the merits of the case. Rather, the judgment has been passed by adopting hyper-technical method. Such a short-cut method resorted to by the Courts below cannot be appreciated by this Court. This is more so that the order of acquittal has been passed in a case filed under Section 138 to 142 of The Negotiable Instruments Act. It is settled that in a Criminal Prosecution, the Accused is entitled to maintain stoic silence and it is for the complainant to discharge the entire burden of proving his case. While so, the Courts below, in the opinion of this Court, ought to have afforded one more opportunity to the Revision Petitioner/Complainant to prosecute the complaint filed by him. In any event, the *gay-abandon* with which the Courts below proceeded to dismiss the complaint filed by the Complainant/Petitioner in this case cannot be appreciated.

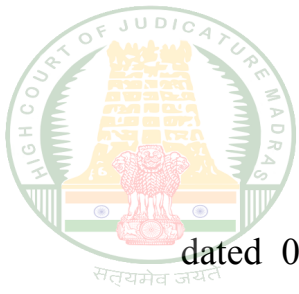


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11. In all the decisions relied on by the Counsel for the Revision Petitioner/Complainant, which are extracted supra, it was time and again reiterated that merely because the Complainant or his or her Counsel did not appear, it will not be a ground for the Criminal Court to acquit the Accused by adopting a hyper-technical approach. The said judgments squarely apply to the facts of the present case. In this case, the Courts below have acted in impulsive haste to record a Judgment of acquittal merely because the Complainant was absent, which cannot be accepted by this Court.

12. In the light of the above discussions and on the basis of the various decisions cited by the learned Counsel for the Revision Petitioner/Complainant, the point for consideration is answered in favour of the Revision Petitioner and against the Respondent. The Judgment dated 02.07.2019 made in Criminal Appeal No.14 of 2019 passed by the learned Principal District and Sessions Judge, Cuddalore confirming the Judgment dated 12.04.2016 passed by the learned Judicial Magistrate No.II, Chidambaram in STC.No.313 of 2013 is found perverse and the same is to be set aside.

In the result, **this Criminal Revision Case is allowed.** The Judgment



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dated 02.07.2019 made in Criminal Appeal No.14 of 2019 passed by the learned Principal District and Sessions Judge, Cuddalore confirming the Judgment dated 12.04.2016 passed by the learned Judicial Magistrate No.II, Chidambaram in STC.No.313 of 2013 is set aside. The The learned Judicial Magistrate - II, Chidambaram is directed to examine the Accused under Section 313 Cr.P.C., if not already examined, hear the arguments of Counsel for both sides and dispose of the Complaint based on the evidence available on merits. Such an exercise shall be undertaken by the learned Judicial Magistrate-II, Chidambaram to complete all the formalities and to wrap up the Complaint, within a period of one month from the date of receipt of a copy of this order and report compliance.

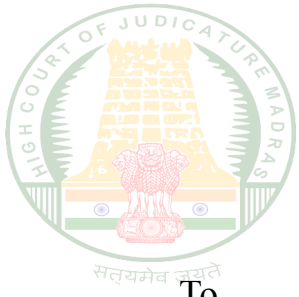
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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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To
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1. The Principal District and Sessions Judge, Cuddalore.
2. The Judicial Magistrate – II, Chidambaram.



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SATHI KUMAR SUKUMARA KURUP, J.

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Order made in
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