



WEB COPY

CRL.A.(MD).No.276 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.11.2025

PRONOUNCED ON : ..28.11.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No.276 of 2024

M.Thangavel .. Appellant/Complainant

Vs.

C.Vijayakumar .. Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378(1) Cr.P.C, to call for the records and set aside the judgment passed by the learned Judicial Magistrate No.II, Karur in S.T.C.No.996 of 2023, dated 29.09.2023.

For Appellant : Mr.R.Mathiyalagan

For Respondent : No Appearance

JUDGMENT

The Criminal Appeal is directed against the order made in S.T.C.No.996 of 2023, on the file of the Court of the Judicial Magistrate No.II, Karur, dismissing the complaint under Section 256 Cr.P.C.



2. The appellant, who is the complainant, filed a private complaint under Section 200 Cr.P.C., against the respondent/accused for the alleged offence under Section 138 r/w 142 of Negotiable Instruments Act.

3. The case of the complainant is that the accused borrowed a sum of Rs.2,00,000/- on 05.02.2022 and promised to repay the amount within a month, that the accused in order to discharge the said liability issued a post dated cheque dated 10.03.2022, drawn on State Bank of India, Karur Old By-pass road branch, for Rs.2,00,000/- in favour of the complainant, that the complainant presented the cheque for collection through his DBS Bank India Ltd., Karur West Branch on 15.03.2022 and the same was returned for want of sufficient funds in the bank account of the accused, that the complainant has sent a legal notice dated 04.04.2022 directing the accused to pay the amount covered by the cheque, that the accused having received the said notice on 06.04.2022, neither sent any reply nor complied with the notice demand and that therefore, the complainant was constrained to file the above complaint for the offence under Section 138 of the Negotiable Instruments Act.

4. The learned Judicial Magistrate (Fast Track Court at Magisterial Level), Karur, upon receipt of the complaint, recorded the sworn statement of the



complainant and on perusing the records, upon satisfied that there existed a prima facie case, took the case on file in S.T.C.No.261 of 2022 and ordered for issuance of summons to the accused. After the appearance of the accused, copies of the records were furnished to him under Section 207 Cr.P.C., on free of costs. When the accused was questioned about the offence alleged against him, he denied the commission of offence and pleaded not guilty. When the case was pending for trial, as per the proceedings of the Chief Judicial Magistrate, Karur, dated 28.03.2023, the case was transferred to the file of the Court of Judicial Magistrate No.II, Karur and the same was taken on file in S.T.C.No.996 of 2023.

5. It is evident from the records that since the appellant/complainant failed to appear before the concerned Court, the learned Magistrate has passed the impugned order on 29.09.2023 and the same is extracted hereunder:

“Complaint has been filed by the complainant M.Thangavel against the accused C.Vijayakumar U/s 138 of NI Act, 1881.

Both parties called absent. U/s 256 and 317 Cr.P.C, filed. U/s 256 Cr.P.C., dismissed and the complaint also dismissed as sufficient time was given to the complainant”



Challenging the above order dismissing the complaint for default, the present Criminal Appeal came to be filed.

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6. The learned Counsel for the appellant would submit that the trial Court without hearing the complainant's side and in violation of the principles of natural justice, passed the impugned order dismissing the complaint, that the learned Magistrate has not chosen to issue notice before dismissing the complaint, that not only the complainant, but the accused had also absented, that the complainant has filed the above complaint for the dishonour of the cheque for Rs.2,00,000/-, that the appellant should be given one more opportunity to prosecute the complainant and that therefore, the impugned order may be set aside and the matter may be remitted to the trial Court.

7. Despite the receipt of notice, the respondent has not turned.

8. When the matter is taken up for hearing, the learned Counsel for the appellant produced the copies of "B" diary, wherein it is evident that the complainant failed to appear for four hearings, ie, for the hearings on 06.07.2023, 28.07.2023, 23.08.2023 and 07.09.2023 and when the matter was taken up on 07.09.2023, the learned Magistrate, by allowing the applications filed under Sections 256 and 317 Cr.P.C., adjourned the matter to 29.09.2023 to



give one more chance for the complainant. But on 29.09.2023 also since the complainant as well as the accused had absented themselves, the learned Magistrate, after dismissing their applications to condone the absence under Section 256 and 317 Cr.P.C., proceeded to dismiss the complaint for default.

9. It is pertinent to note that the above case is pending from 2022 and since the complainant has not turned up for trial, the impugned order of dismissal came to be passed on 29.09.2023. Considering the “B” diary, this Court has no hesitation in saying that the appellant is at fault, but at the same time, as rightly pointed out by the learned Counsel for the appellant, the accused had also absented himself for the said hearings and their applications under Section 317 Cr.P.C., came to be allowed.

10. Considering the above facts and circumstances, this Court is of the view that the appellant should be given one more opportunity to prosecute the complaint and as such, the impugned order is liable to be set aside.

11. In the result, the Criminal Appeal is allowed and the impugned order made in S.T.C.No.996 of 2023, on the file of the Court of the Judicial Magistrate No.II, Karur, is set aside. The learned Judicial Magistrate No.II, Karur is directed to restore the complaint in STC No.996 of 2023 to its file and issue



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notice to the respondent and after appearance, to proceed with the trial and dispose of the case within a period of three months from the date of the appearance of the respondent /accused.

28.11.2025

Index : Yes/No

Internet : Yes/No

SSL

To

1. The Judicial Magistrate Court No.II, Karur.

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



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K.MURALI SHANKAR, J.

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PRE-DELIVERY JUDGMENT MADE IN

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