

CRL A(MD) NO. 1019 of 2
BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT



DATED: 25-02-2025

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THE HONOURABLE MR JUSTICE B.PUGALENDHI

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CRL A(MD) NO. 1019 of 2024

Nebula Technology
Rep. by its Owner, Nithyanandhan , 14th Floor, Sri
Vigneshwara Complex, Trichy.

Appellant(s)

Vs

Punitha Rosita Malar
Respondent(s)

Prayer : Criminal Appeal filed under Section 419 of BNSS to call for records pertaining to the order passed by the District Munsif cum Judicial Magistrate, Srirangam in CrI MP.No. 4695 of 2022, dated 10.01.2024 and to set aside the same.

For Appellant(s): M/s.Haroon Rasheed.D.S

For Respondent(s): M/s. Joel Paul Antony A

ORDER

This Criminal Appeal is filed as against the order passed by the Judicial Magistrate Srirangam in CrI MP No.4695 of 2022 under section 256(i) CRPC. The appellant has filed a private complaint as against the respondent accused for the offence punishable under Section 138 of the Negotiable Instrument Act.

2.The learned Judicial Magistrate recorded the sworn statement of the complainant in CrI MP.No. 4695 of 2022 on 25.09.2022. Subsequently the case was posted on 10.01.2024 for the purpose of issuing summons to the respondent /accused. On that day, there was no representation for the complainant / appellant and therefore, the complaint of this

<https://www.mhcojudy.org> appellant was dismissed under Section 256(i) CRPC.



3. The learned counsel for the appellant by referring the provision under Section 256(i) of the CrPC submits that the complaint itself has not been taken on file by the trial Court and that the appellant was under the impression that after taking the sworn statement the trial court would assign STC number and order notice to the respondent. Therefore, the learned counsel has also not followed up the complaint. However, without issuing notice in the complaint filed by this appellant, the trial Court dismissed the complaint under Section 256 (i) CRPC.

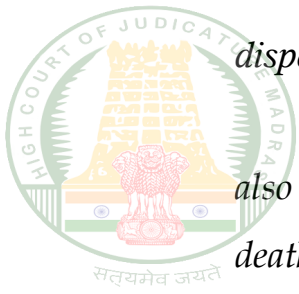
4. The learned counsel for the respondent / accused submits that there is no legally enforceable debt in this case and this complaint itself has been filed vexatiously.

5. This Court considered the rival submissions made and perused the materials placed on record.

6. According to the learned counsel for the appellant, the complaint was filed on 25.09.2022 and it was dismissed under Section 256(i) CRPC at the stage of recording the sworn statement. Section 256(1) of CrPC reads as follows:

“ 256. Non-appearance or death of complainant.

(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day : Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may



dispense with his attendance and proceed with the case.



(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death."

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7. The complaint was closed without issuing any notice to the respondent accused. The sworn statement was recorded on 25.09.2022. Till 10.01.2024 summons were not issued. The personal attendance of the complainant is not required at that stage. Therefore, this appeal is allowed and the order dated 10.01.2024 passed in CrIMP.No.4965 of 2022 by the learned District Munsif cum Judicial Magistrate, Srirangam is set aside. The matter is remanded back to the trial Court for considering the complaint of the appellant on its merits.

25-02-2025

DSK

To

The District Munsif cum
Judicial Magistrate,
Srirangam



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