



Crl.A(MD)No.774 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.07.2025

CORAM :

THE HONOURABLE DR. JUSTICE R.N.MANJULA

Crl.A(MD)No.744 of 2024

Samuthirakani ... Appellant/Complainant

Vs.

Muniyaraj ... Respondent/Accused

PRAYER: Criminal Appeal filed under Section 372 of Criminal Procedure Code, to call for the records relating to the impugned order made in C.C.No.375 of 2021 dated 16.11.2021 on the file of the Judicial Fast Track Magistrate, Srivilliputtur under Section 256 of Cr.P.C by acquitting the respondent/accused and set aside he same as illegal by allowing the appeal.

For Appellant : Mr.T.Veerakumar

For Respondent : No appearance



Crl.A(MD)No.774 of 2024

WEB COPY

JUDGMENT

The appeal has been preferred challenging the Judgement of the learned Judicial Fast Track Magistrate, Srivilliputtur in C.C.No.375 of 2021 dated 16.11.2021, wherein, the proceedings was dismissed for non-appearance of the complainant.

2. I have given my anxious consideration to the submission made by the learned counsel for the appellant and carefully perused the materials available on record.

3. The appellant is the complainant who has filed a complaint against the respondent for the offence under Section 138 of Negotiable Instruments Act.

4. The learned counsel for the appellant submitted that the appellant has shifted his residence from the old address to a new address. In the meanwhile, the proceedings have been transferred from Judicial



Crl.A(MD)No.774 of 2024

WEB COPY

Fast Track Magistrate, Rajapalayam to Judicial Fast Track Magistrate, Srivilliputtur. Notice sent to the old address has not been received by the appellant and hence, he lost track of the case.

5. The learned counsel for the appellant submitted that the proviso to sub-section (1) of Section 256 of the Code enables the Magistrate to dispense with the attendance of the complainant and proceed with the case where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of the opinion that the personal attendance of the complainant is not necessary. In the instant case, since his advocate before the lower Court also died, the appellant did not know the result of the proceedings. At a later point of time, with lot of difficulties by engaging the services of other counsel, the appellant came to know about the dismissal of his complaint. Hence, he prays for setting aside the judgment dated 16.11.2021 and seeks an opportunity to contest the case on merits.



Crl.A(MD)No.774 of 2024

WEB COPY

6. In this regard, it is worthwhile to refer the judgment of the Orissa High Court in **Chinnam Ramnath Patro vs Chandramma Guni another dated 29.10.1962**. The relevant portion of the judgment is extracted herein under:

9. "...Under the new amendment, the scope of the proviso to [Section 247](#) has been widened to dispense with the presence of the complainant irrespective of the fact whether or not he is a public servant. The object underlying the proviso is that the Magistrate should proceed with the case if the complainant's presence is not necessary for the purpose of the case and to form an opinion whether the presence of the complainant is or is not necessary, the Magistrate has to act judicially and not capriciously.

...

A Magistrate can proceed with the case even in the absence of a complainant as in some cases the complainant's presence may be absolutely unnecessary.

7. The Hon'ble Supreme Court in **Associated Cement Co. Ltd. v. Keshvanand** reported in (1998) 1 SCC 687 held thus:



Crl.A(MD)No.774 of 2024

WEB COPY

“16. What was the purpose of including a provision like Section 247 in the old Code (or Section 256 in the new Code). It affords some deterrence against dilatory tactics on the part of a complainant who set the law in motion through his complaint. An accused who is per force to attend the court on all posting days can be put to much harassment by a complainant if he does not turn up to the court on occasions when his presence is necessary. The section, therefore, affords protection to an accused against such tactics of the complainant. But that does not mean if the complainant is absent, the court has a duty to acquit the accused in invitum.”

8. In view of the judgments cited supra and since the appellant has assigned acceptable reasons as to why he cannot keep track of the proceedings, I feel that one opportunity can be granted to the appellant in order to enable him to argue his case and obtain an order on merits. Even if the complaint is restored, it is obligatory on the part of the appellant to check whether notice is served on the respondent.



Crl.A(MD)No.774 of 2024

WEB COPY

23. In fine,

(i) This Criminal Appeal is allowed;

(ii) The judgment dated 16.11.2021 passed in C.C.No.375 of 2021 dated 16.11.2021 on the file of the learned Judicial Fast Track Magistrate, Srivilliputtur, is set aside.

(iii) The learned Judicial Fast Track Magistrate, Srivilliputtur, is directed to restore the complaint filed by the appellant on file. After issuing notice to the accused and after conducting full-fledged trial, the case shall be disposed of on merits and in accordance with law as expeditiously as possible.

02.07.2025

Index : Yes/No
Internet : Yes/No
CM



WEB COPY



CrI.A(MD)No.774 of 2024

To,

1.The Judicial Fast Track Magistrate,
Srivilliputtur

3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A(MD)No.774 of 2024

R.N.MANJULA, J

CM

Judgment made in
Crl.A(MD)No.744 2024

02.07.2025