

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.03.2019

Coram:

The Honourable Mr. Justice P.RAJAMANICKAM

Crl.A.No.773 of 2009

S.Vinayagamoorthy

... Petitioner

Versus

P.Mahendran

... Respondent

PRAYER: This Criminal Appeal has been filed under Section 378 of the Criminal Procedure Code to set aside the order in S.T.C.No.29 of 2006 dated 02.11.2009 passed by the learned Additional District Munsif, Cheyyar and further direct the learned Additional District Munsif, Cheyyar, to take appellant case in S.T.C.No.29 of 2006 on file and proceed in accordance with law.

For Petitioner : No appearance

For Respondent : No appearance

ORDER

This Criminal Appeal has been filed by the complainant against the order passed by the Additional District Munsif, Cheyyar, in S.T.C.No.29 of 2006 dated 02.11.2009.

2.The appellant herein had filed a private complaint alleging that the respondent herein borrowed a sum of Rs.40,000/- (Rupees Forty Thousand Only) on 23.01.2006 and to discharge the said debt, the respondent had issued a cheque for Rs.40,000/- (Rupees Forty Thousand Only) dated 23.02.2006. He further alleged that he presented the said cheque on 23.02.2006 in the State Bank of India, Cheyyar Branch for Encashment. The said cheque was returned on 03.03.2006 on the ground that the account was closed and hence, he issued a statutory notice on 20.03.2006 calling upon the respondent to pay the amount due on the said cheque. He further alleged that though, the respondent/accused had received the said notice on 03.03.2006, he has not come forward to pay the amount nor sent any reply and hence he filed a private complaint under Section 200 of Cr.P.C., before the Judicial Magistrate No-II, Cheyyar, to punish the respondent/accused under Section 138 of Negotiable Instruments Act.

3. Based on the said complaint, the learned Judicial Magistrate No-II, Cheyyar has taken the case on file in S.T.C.No.329 of 2006 and subsequently, it was transferred to the Additional District Munsif, Cheyyar and renumbered as S.T.C.No.29 of 2006.

4. On 02.11.2009, the learned Additional District Munsif, Cheyyar has passed the following order:

"Order

Complainant and Accused not present.  
317 petition filed and allowed. Complainant not present. No representation for complainant upto 04.20.P.M. Hence, this petition is dismissed for default. Accused discharged".

5. Challenging the said order, the complainant has filed the present appeal under Section 378 of Cr.P.C.,

6. Though, the name of the appellant and his counsel have been printed in the cause list, neither the appellant nor his counsel appeared. It is seen from the records that a private notice which was sent to the respondent/accused was served on 09.08.2018 and to that effect Affidavit of Service also filed before this Court and the same has been recorded by this Court on 19.01.2019. But even thereafter, the respondent/accused also has not appeared, either in person or through his counsel. Hence, after perusing the records, judgment is being passed in this Criminal Appeal.

7. A perusal of the order passed by the learned Additional District Munsif, Cheyyar shows that on 02.11.2009 when the case was came up for hearing before her, both the complainant and the accused not appeared. To condone the absence of the accused, the counsel for the accused has filed an application under Section 317 of Cr.P.C., and the same was allowed. But, no representation for the complainant and hence, the matter was passed over and taken up at 04.20 p.m., At that time also, there was no representation for the complainant. Hence, the learned Additional District Munsif, Cheyyar has dismissed the said complaint for default and discharge the accused.

8. The learned Additional District Munsif, Cheyyar has taken the case on file as Summary Trial Case. As per Section 262 (1) of Cr.P.C., in respect of summary trial cases, the Magistrate has to follow the procedure specified for the trial of summons cases. As per Section 256(1) Cr.P.C., if the summons has been issued on complaint, and on the day appointed for the

appearance of the accused, or any days subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything herein before contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day. In view of the aforesaid provision of law, if the complainant not appeared, the Magistrate has to acquit the accused. But in this case, the learned Additional District Munsif, Cheyyar, has dismissed the complaint for default and discharged the accused. The procedure followed by the learned Additional District Munsif, Cheyyar, is contrary to the law.

9. Further, in the order passed by the learned Additional District Munsif, Cheyyar, she has not stated for what purpose the case was posted on 02.11.2009. Nothing has been stated in the said order that because of the non-appearance of the complainant, she could not make progress in the said case. Therefore, this Court is inclined to allow this appeal and remit the matter to the trial court for disposal of the case on merits. However, it is also to be taken into consideration the conduct of the appellant/complainant. As already pointed out that this case has been specially listed today. But, neither the appellant/complainant nor his counsel appeared before this Court. In the appeal memorandum, the appellant/complainant has stated that due to his illness [Stomach Pain], he could not appear before the trial court. To substantiate the said plea, he has not produced any medical certificate. Therefore, this Court is of the view that the appellant/complainant shall be put on terms.

10. In the result, this Criminal Appeal will be allowed on payment of cost of Rs.2,000/- (Rupees Two Thousand Only) to the Legal Services Committee of High Court, Madras, on or before 26.04.2019, failing which this Criminal Appeal shall stand dismissed without any further reference to the Court. The learned Additional District Munsif, Cheyyar, is directed to restore the S.T.C.No.29 of 2006 on file, on production of the receipt showing the payment of cost as aforesaid and dispose of the case in accordance with law.

Sd/-  
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

sbn/rna

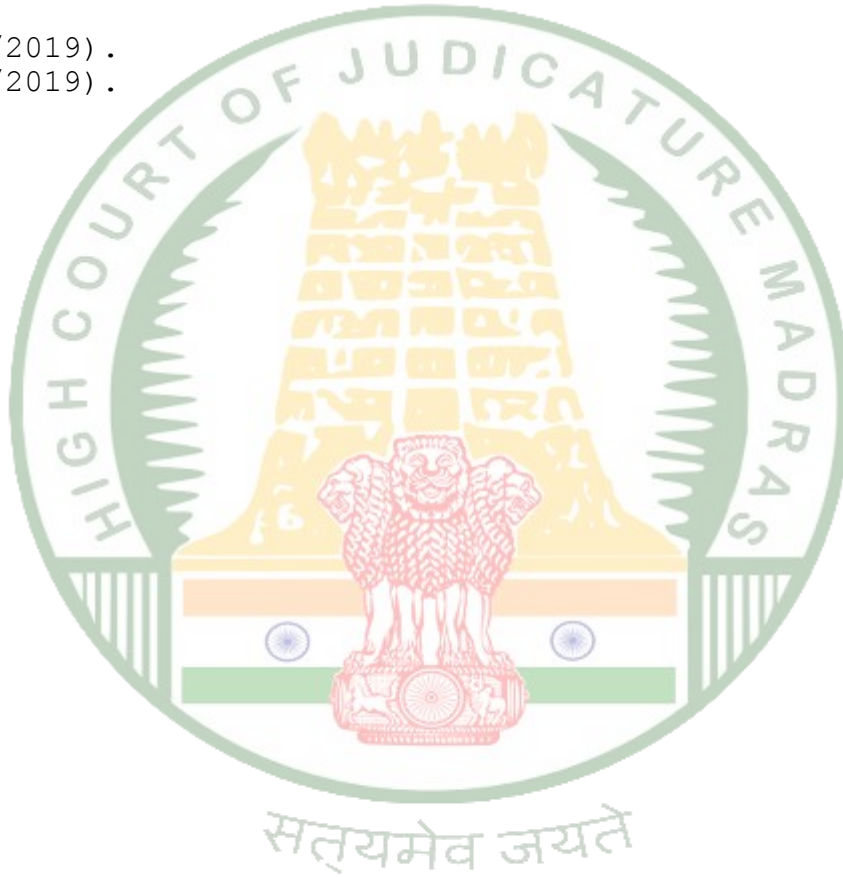
To

The Additional District Munsif,  
Cheyyar.

copy to: The Secretary,  
Legal Services Authority,  
High Court, Madras.

Crl.A.No.773 of 2019

KS (CO)  
SSM(08/05/2019).  
SSM(10/06/2019).



WEB COPY