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Court : Chennai

Decided On : Mar-13-2006

Reported in : II(2007)BC352; 2006CriLJ3170

Judge : K.N. Basha, J.

Acts : Negotiable Instruments Act - Sections 138; Code of Criminal Procedure (CrPC) , 1974 - Sections 256 and 256(1)

Appeal No. : Cri. Appeal Nos. 332 and 333 of 2001

Appellant : Jindalpipes Ltd.

Respondent : Beard Sell Satec Ltd. and ors.

Advocate for Def. : B. Natarajan, ;K. Sridharkumar, Advs. and ;N. Doraisamy, LAC

Advocate for Pet/Ap. : K. Govi Ganesan, Adv.

Disposition : Appeal allowed

Judgement :

K.N. Basha, J.

1. These appeals against acquittal are preferred by the complainant in C. C. Nos. 5370 and 5371 of 1998 on the file of the learned VII Metropolitan Magistrate,

George Town, Chennai-1 challenging the orders dated 17-1-2001 dismissing the complaints filed by them on the ground of non-appearance in the cases under Section 138 of the Negotiable Instruments Act.

2. A perusal of the records shows that though notice has already been ordered to the fourth respondent, service is awaited. No useful purpose will be served in keeping the appeals pending. The appeals relate to the year 2001. Hence, Mr. N. Doraiswamy, learned Counsel is appointed by this Court as the legal aid counsel for the fourth respondent.

3. A perusal of the records further discloses that the learned Magistrate called the abovesaid C.Cs. filed by the appellant/complainant on 17-1-2001 and dismissed the complaints on the ground of non-appearance of the complainants. In these cases, the learned Magistrate passed a mechanical order simply on the ground that the complainant was not present and ultimately acquitted the accused. It is not stated by the learned Magistrate in the said order that the accused was present on that day. The order of the learned Magistrate, on the face of it, is arbitrary and illegal.

4. It is well settled by the Hon'ble Supreme Court of India in Associated Cement Company Limited v. Keshvanand : 1998 CriLJ856 , that:

Two constraints are imposed on the Court for exercising the power under Section 256. First is, if the Court thinks that in a situation it is proper to adjourn the hearing then the Magistrate shall not acquit the accused. Second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day the Magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that the complainant is absent on a particular day the Court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the Court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the com-plaint may not be a proper exercise of the power envisaged in the

section. The discretion must, therefore, be exercised judicially and fairly without impairing the cause of administration of criminal justice.

5. Mr. N. Doraisamy, learned Counsel appearing as the legal aid counsel for the fourth respondent also relies upon the decision in the case of Amarchand v. Sanjeev Rastogi 2001 11 LW 529 : 2002 Cri J 3815 wherein a similar view as laid down by the Apex Court in the decision reported in : 1998 CriLJ856 (supra) has been taken.

6. As per the preposition of law laid down by the Apex Court, I have no other alternative except to allow the appeals and to set aside the orders of acquittal passed by the learned Magistrate under Section 256(1), Cr.P.C.

7. Accordingly, these appeals are allowed and the orders passed by the learned Magistrate are set aside. The learned Magistrate shall expedite the trial and complete the same within a period of six months from the date of receipt of copy of this order. The learned Counsel for the appellant undertakes to serve proper notice on the fourth respondent by taking effective steps in order to make the fourth respondent to appear for the trial.

8. Mr. N. Doraisamy, learned Counsel is entitled to get remuneration from the Tamil Nadu State Legal Services Authority, as he has argued the appeals as legal aid counsel on behalf of the fourth respondent.

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