

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1136 OF 2015

ORDER:

This Criminal Appeal is filed by the appellants, challenging the order, dated 16.06.2015, passed in C.C. No.188 of 2011 by the Judicial Magistrate of First Class, Luxettipet.

Originally, one A. Bhupathi Rao filed CC No.188 of 2011 before the Judicial Magistrate of First Class, Luxettipet, against the 2nd respondent alleging that the 2nd respondent had taken a hand-loan of Rs.1,00,000/- from him and when he requested to repay the same, the 2nd respondent issued a cheque bearing No.423849, dated 17.03.2011. It is further alleged that when he presented the said cheque in the bank, it was dishonoured on the ground of insufficient funds. Therefore, he filed a private complaint against the 2nd respondent. During the pendency of the case, the said Bhupathi Rao died and his L.Rs., i.e. appellants herein, were brought on record. As the appellants failed to appear before the Court below on 16.06.2015, the Court below dismissed the CC, through the impugned order, dated 16.06.2015. Aggrieved by the same, the present criminal appeal is filed.

Learned counsel for the appellants submits that the appellants have wrongly noted the date of hearing of the case before the Court below as 17.06.2015, instead of 16.06.2015, therefore, they could not appear before the Court below on that day, and their absence is neither willful nor wanton. He further submits that the appellants have got a good case and the Court below, without considering the fact that the absence of the appellants is neither willful nor wanton, dismissed the complaint, which amounts to acquittal of the 2nd respondent - accused.

Heard and perused the material available on record.

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Considering the facts and circumstances of the case, this Court is of the view that since the complaint was dismissed only on the ground that the appellants were absent before the Court below on the day when the matter was posted for hearing, which is first time, the appellants can be given one more opportunity to put forth their case, by restoring the complaint to its file, in the interest of justice.

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Accordingly, the Criminal Appeal is allowed setting aside the impugned order, dated 16.06.2015, passed in C.C. No.188 of 2011, by the Judicial Magistrate of First Class, Luxettipet and the case is restored to file. The Court below is directed to issue summons to the 2nd respondent afresh and proceed with the case in accordance with law. Miscellaneous petitions pending, if any, shall stand closed.

RAJA ELANGO, J

November 03, 2015
KTL