

(2007) 08 DEL CK 0058

In the Delhi High Court

Case No : Criminal Appeal s No"s. 174, 176, 177, 178, 179, 180, 181, 182, 183 and 184 of 2007

Maruti Udyog Ltd.

APPELLANT

Vs

Classic Motors Ltd. and Others

RESPONDENT

Date of Decision : 30-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 256
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2007) 08 DEL CK 0058

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Chetna Bhalla, for the Appellant; Ghanshyam Sharma, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—This appeal has been preferred by the appellant against the order dated 16.9.2004 which reads as under:

Maruti Udyog v. Narendra Anand

16.09.2004

Called again after lunch it is 3.23 p.m.

Present : Accused No. 1 and 2 on bail with counsel Sh. G.S. Sharma Since morning none has appeared for the complainant despite repeated calls.

Similar was the position on the last two dates. The matter had been today for the evidence of complainant. On account of non appearance of the complainant, accordingly the complaint is dismissed u/s 256 CrPC. Accused stand acquitted. Sureties discharged. File be consigned to record room.

sd/-

MM

2. It is submitted by the appellant that the complaint of the appellant pending before Metropolitan Magistrate as per administrative order of High Court the was transferred to Ms. IN a Malhotra, ASJ for adjudication under High Court order. Before the Court of ASJ notice u/s 251 Cr.P.C. was framed against the accused and the matter was adjourned for appellant evidence. In the meanwhile, as per the directions of High Court, the matter was transferred back to the learned Metropolitan Magistrate for adjudication. However, counsel for the appellant lost track of the matter after its transfer to Metropolitan Magistrate and could not carry forward the case in his diary, hence he could not appear before the learned Metropolitan Magistrate on 28.1.2004, 15.5.2004 and 16.9.2004, three consecutive dates of hearings. The matter was dismissed on 16.9.2004

3. It is submitted that non-appearance of the appellant and his counsel before the learned Metropolitan Magistrate was due to the above reason, it was neither intentional nor willful. No notice was served upon the appellant after transfer.

4. The appeal is opposed by the respondent who has stated that the order-sheet of the trial court reveals that it was the appellant, who was delaying the proceedings and was not able to lead the evidence. The appellant was not present on 15.5.2004 and 16.9.2004, before the Court of MM and the Court of MM rightly dismissed the complaint. The appellant thereafter, preferred a revision, which was dismissed by the Court of Additional Sessions Judge being not maintainable. The appellant then filed an appeal before the Additional Sessions Judge, which was also withdrawn being not maintainable.

5. The appellant very fairly admitted that the appellant counsel had not been able to carry forward the dates in his dairy after transfer of case from the Court of Sessions to the Court of Metropolitan Magistrate. This Court can take judicial notice of the fact that a large number of cases u/s 138 of NI Act were transferred from the Court of Metropolitan Magistrates to the Courts of Sessions under the administrative directions of this Court. The order of transfer of such complaints u/s 138 of NI Act to the Court of Sessions was challenged before this Court and this challenge was upheld and all cases transferred to Sessions Court were sent back to the Court of MM. Although the counsel for the appellant could have been more vigilant and should have kept the track of the cases, but considering the fact that transfers from Court of Sessions to the Court of MM were made without any notice to the parties, the Court of Metropolitan Magistrate should have sent a court notice to the complainant on receipt of this case on transfer instead of dismissing the complaint. I, Therefore, allow this appeal. The order of the learned Metropolitan Magistrate is set aside. The complaint is restored to its original number. Parties are directed to appear before the Court of ACMM/CMM on 13th September, 2007.

ACMM/CMM shall mark the case to the concerned MM on that day.