

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.06.2015

Coram

The Honourable Mr. Justice B. RAJENDRAN

Crl. R.C. No. 258 of 2015

Prithiviraj

... Petitioner/Accused

Versus

S.Kamala

... Respondent/Complainant

Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C, against the order dated 28.01.2015 passed by the learned VI Additional Sessions Judge, Chennai, in C.A.No.93 of 2011, dismissing the appeal for default, which was filed against the order in C.C.No.3784 of 2000 on the file of the V Metropolitan Magistrate, Egmore, dated 11.04.2011.

For petitioner : Mr.P.Ramesh Kumar

For respondent : Mr.S.Kumara Devan

ORDER

The Criminal Revision Case has been filed by the petitioner/accused aggrieved by the order dated 28.01.2015 passed by the learned VI Additional Sessions Judge, Chennai, in C.A.No.93 of 2011, dismissing the appeal for default. The said Appeal was filed against the order passed by the learned V Metropolitan Magistrate, Egmore, Chennai, in C.C.No.3784 of 2000, dated 11.04.2011, whereby, the petitioner/accused was convicted for the offence under Section 138 of Negotiable Instruments Act and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months and also to pay a compensation of Rs.1,55,000/- within a period of six months.

2. Today, when the matter is taken up, Mr.P.Ramesh Kumar, learned counsel for the petitioner would submit that the petitioner is a senior citizen, aged about 65 years, and he is suffering from various ailments and therefore, he is taking treatment and hence, he could not appear before the Appellate Court, however, the counsel appearing on his behalf appeared before the Appellate Court and sought for an adjournment, but, a time of only one day was given and on the next day, the appeal was dismissed for default, without going into the merits of the case. He would rely on the decision of the Hon'ble Apex Court reported in (2013) 3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, to substantiate his contention that the dismissal of the criminal case can be only on merits in the absence of the appellant and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining on merits. Relying on the said decision, learned counsel

would contend that the order passed by the Appellate Court dismissing the appeal for default on the ground of non-prosecution is per se illegal and it is not in accordance with the judgment of the Hon'ble Apex Court. He would further add that to show his bona fide, the petitioner is prepared to deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) and he is also willing to get on with the case immediately.

3.Mr.S.Kumara Devan, learned counsel appearing for the respondent would contend that the petitioner/accused is attempting to drag on the proceedings and only on that ground the Appellate Court has dismissed the appeal for default on the ground of non-prosecution.

4. In the judgment of the Hon'ble Apex Court reported in (2013) 3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, it is held in paragraph No.19 as follows:-

"19. From the aforesaid decision in Bani Singh vs. State of Uttar Pradesh, reported in (1996) 4 SCC 720, the principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

5. In the light of the principles culled out in the judgment of the Hon'ble Apex Court cited supra, it is crystal clear that no doubt, the Court can decide the matter even in the absence of accused or his counsel, but, only criteria is that the case should be decided on merits in the absence of the accused and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining the case on merits. Therefore, following the judgment cited supra, the judgment passed by the Appellate Court is set aside and the Criminal Revision Case is allowed, however, on condition that the petitioner/accused shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the credit of C.C.No.3784 of 2000 on the file of the V Metropolitan Magistrate, Egmore, Chennai, within a period of six weeks from the date of receipt of a copy of this order, failing which, the order passed by the Appellate Court shall stand revived. On such deposit being made by the petitioner/accused, the Appellate

Court is directed to take the appeal on file and after hearing the parties shall dispose of the same, on merits and in accordance with law, as expeditiously as possible.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

paa

To

- 1.The VI Additional Sessions Judge, Chennai.
- 2.The V Metropolitan Magistrate, Egmore, Chennai.
3. -do- Through The Chief Metropolitan Magistrate, Egmore, Chennai.

+1cc to Mr.P.Rameshkumar, Advocate, S.R.No.27589

+1cc to Mr.S. Kumaradevan, Advocate, S.R.No.27546

JSV(CO)
EU(24/06/2015)

Cr1.R.C.No.258 of 2015

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