

Bail Slip

The Petitioner/ Accused namely Premkumar was directed released on bail vide order dated 22.04.2015 made in Mp 1/15 in crl. R.C. No 281/15 and the same order was cancelled on vide order dated 28.07.2015 made in Mp. No.3\15 in Cr1. R.C. No.281/15.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-08-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 281 of 2015

Premkumar ... Petitioner/Appellant

Versus

K.Selvam ... Respondent/Respondent

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the judgment dated 26.03.2015 in Cr1.A. No. 62 of 2014 on the file of the learned I Additional Sessions Judge, Tiruvallur, confirming the judgment of conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruvallur, in C.C. No. 146 of 2013, dated 06.06.2014.

For Petitioner : Mr.M.P.Saravanan

For Respondent : Mr.K.Joshisivam

ORDER

The petitioner/accused is alleged to have borrowed a sum of Rs.15,00,000/- as loan from the respondent/complainant and executed a promissory note in favour of the complainant on 10.06.2012. The accused promised to repay the said loan amount along with interest at the rate of 12% per annum within one year. When the complainant approached the accused for repayment, the accused is alleged to have issued a cheque for the said sum. When the complainant presented the cheque for collection, the same returned with an endorsement "Funds Insufficient". Though, the statutory notice sent by the complainant was received by the mother of the accused, the accused neither sent any reply nor came forward to repay the amount. Hence, the respondent/ complainant filed a case under Section 138 of Negotiable

Instruments Act. The case was taken on file in C.C.No.146 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruvallur. After trial, the petitioner/accused was convicted for the offence under Section 138 of Negotiable Instruments Act by judgment dated 06.06.2014 in C.C. No.146 of 2013 and sentenced to undergo simple imprisonment for a period of 15 months and to pay a compensation of Rs.15,00,000/- to the complainant, in default to undergo simple imprisonment for six months. Aggrieved by the same, the petitioner filed Crl.A. No. 62 of 2014 and the same was dismissed by the I Additional Sessions Judge, Tiruvallur, by confirming the judgment of Trial Court, by judgment dated 26.03.2015, against which the present Criminal Revision Case is filed.

2.It is pertinent to note that at the time of admission of revision, in M.P.No.1 of 2015 suspension was granted by order dated 22.04.2015, however, on condition that the petitioner should deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs only) before the Trial Court. Subsequently, it was brought to the notice of this Court that the condition imposed while granting suspension has not been complied with by the petitioner and hence, the suspension was revoked by this Court by order dated 28.07.2015 in M.P.No.3 of 2015. Thereafter also, the petitioner had not chosen to appear before this Court. Hence, the main revision was directed to be posted under the caption "for dismissal".

3. Today, though, the matter is listed under the caption "for dismissal", when the matter is taken up, there is no representation for the petitioner/accused. The Hon'ble Apex Court in the decision reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, has culled out certain principles and in paragraph No.19 has held 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."

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 petitioner or his counsel, but, only criteria is that the case should be decided on merits in the absence of the petitioner and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining the case on merits. In the light of the decision cited supra, the main Criminal Revision Case itself is taken up and disposed of on merits, after hearing the learned counsel appearing for the respondent/complainant and also after perusing the materials available on record.

4. The main ground raised by the petitioner/accused in the revision is that the accused borrowed money only from his friend Sasi by issuing the cheque, but, the said Sasi borrowed money from the complainant by giving his cheque, which was given to Sasi as security for the money borrowed by the accused from the said Sasi. By using that cheque, the complainant foisted a case against him.

5. In my considered opinion, if the above defence is taken by the accused, then the accused ought to have taken steps to summon the said Sasi to examine him to prove that he has given the cheque only to his friend Sasi. The non-examination of the said Sasi on the part of the accused is fatal. The accused failed to prove how the cheque fell to the hands of the complainant. Even, when the petitioner/accused was questioned under Section 313 of Cr.P.C., it is seen that he has only averred that it is a wrong case. Immediately after the alleged transaction is over with Sasi, the petitioner/accused ought to have taken steps to get back the cheque from the said Sasi, but, there is no explanation as to why he allowed the cheque to remain with him. Admittedly, the petitioner has not issued the said Sasi with any notice seeking to return back the cheque. Further, admittedly, no document has been produced before the Court to show that the petitioner/accused asked for the return of the cheque.

6. The allegation against the accused is that he borrowed Rs.15,00,000/- for which a promissory note-Ex.P.1 was executed by him in favour of the complainant and pursuant to which, a cheque-Ex.P.2 was given to the complainant, which on presented returned for want of sufficient funds, thereby the accused committed the offence under Section 138 of Negotiable Instruments Act. Further more, it is seen that the petitioner/accused has not chosen to pay any amount till date. The petitioner/accused has been dragging on the matter. On a perusal of the entire evidence available on record, it is seen that

the complainant examined himself as P.W.1 and he has produced both the cheque as well as the promissory note to prove the liability of the accused and there was transaction and the cheque and pronote were given by the accused to the complainant. Therefore, as rightly pointed out by both Courts below, when the petitioner/accused admits the signature in the cheque, the presumption as contemplated under Section 139 has to be raised in favour of the complainant and it is for the accused to rebut the presumption that the cheque was not issued to the complainant for a legally enforceable debt. But, for rebutting the presumption, neither oral nor documentary evidence has been produced. When the rebuttal is not let out by the petitioner by producing proper material evidence, in my considered opinion, both Courts below rightly convicted the accused by not accepting the theory put forward by the petitioner/accused. The Appellate Court has rightly pointed out that the complainant has proved his case and therefore, I am of the view that the Court below has arrived at such a conclusion correctly and I do not find any reason to interfere with such a finding rendered by the Court below.

7. In the result, the Criminal Revision Case is dismissed. The judgment passed by the Appellate Court dated 26.03.2015 stands confirmed. The trial court is directed to take steps to secure the presence of the petitioner/accused to undergo the remaining period of sentence, if any. It is needless to mention that any sentence already undergone by the petitioner/accused shall be given set off as contemplated under Section 428 of Cr.P.C.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The I Additional Sessions Judge,
Tiruvallur.
2. -Do- Thro The Principal Sessions Judge,
Tiruvallur.
3. The Judicial Magistrate,
Fast Track Court
(Magisterial Level),
Tiruvallur.

4. -Do- Thro The Chief Judicial Magistrate
Tiruvallur.

+1cc to M/s.V. Paarthiban, Advocate sr.40261

Crl.R.C. No. 281 of 2015

rsi[col]
srg 21.08.2015



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