

Bail Slip

Crl. RC. 306 of 2015: The petitioner/Accused namely, S. Esther in SC.41/2014 on the file of the XVII Additional Sessions Judge, Chennai, was directed to be released on bail in and by the order of this Court dt. 13.04.2015 made in MP.1/2015 in Crl.RC. 306/2015 on the file of the High Court, Madras.

Crl.RC.307/2015: The Petitioner/Accused namely J. Sadhusundar, in SC.40/2015, on the file of the XVII Additional Sessions Judge, Chennai, was directed to be released on bail in and by the order of this Court dt. 13.04.2015 made in MP.1/2015 in Crl.R.C.No.307/2015 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-08-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos.306 and 307 of 2015

and

M.P. Nos. 1 and 1 of 2015

S.Esther ... Petitioner in Crl.R.C.No.306 of 2015/
(Accused)

J.Sadhusundar ... Petitioner in Crl.R.C.No.307 of 2015/
(Accused)

Versus

S.Sampathkumar ... Respondent in both revisions./
(Complainant)

Criminal Revision Cases filed under Sections 397 and 401 of Cr.P.C. against the judgments of conviction and sentence passed by the XVII Additional Sessions Judge, Chennai, in Crl.A.Nos.41 and 40 of 2014, dated 19.01.2015, confirming the judgments of conviction and sentence passed in C.C.Nos. 4982 and 4981 of 2008 by the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, dated 27.01.2014.

For Petitioners : No Appearance
In both revisions

For Respondent : Ms.V.Usha Rani
in both revisions

COMMON ORDER

The petitioners, who are the wife and husband respectively, were alleged to have availed handloan of Rs. 40,000/- and Rs.2,50,000/- respectively on various occasions and dates. Since, the petitioners did not come forward to pay the amount, the respondent/complainant is alleged to have demanded the money, in turn, the petitioners were alleged to have given cheques. When the respondent presented the said cheques for collection, the said cheques returned for want of sufficient funds. The respondent has issued legal notices. On receipt of the said notices, the petitioners have sent their reply, with false allegations. Hence, the complaints. The cases were taken on file in in C.C.Nos. 4982 and 4981 of 2008 on the file of the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai. After trial, the Trial Court, by judgment dated 27.01.2014, convicted the petitioner in Crl.R.C.No. 306 of 2015 for the offence under Section 138 of the Negotiable Instruments Act and sentenced her to undergo three months simple imprisonment and to pay a sum of Rs.40,000/- as compensation. The petitioner in Crl.R.C.No. 307 of 2015 was convicted by judgment dated 27.01.2014 for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment and to pay a sum of Rs.2,50,000/- as compensation. Aggrieved against which, the accused have preferred Crl.A.Nos.41 and 40 of 2014 before the XVII Additional Sessions Judge, Chennai. The Appellate Court, by judgments, dated 19.01.2015, has dismissed the said appeals, thereby, confirming the judgments passed by the Trial Court. Aggrieved against the same, these Criminal Revision Cases are filed.

2. Today, though, the matters are listed under the caption "for dismissal", when the matters are taken up, there is no representation for the petitioners. The Hon'ble Apex Court in the judgment reported in (1994) 4 Supreme Court Cases 664, Prasuram Patel & another vs. State of Orissa, has held that the Criminal Appeal cannot be dismissed for default in appearance of the appellant, but, the Court must decide the matter on merits even in the absence of the appellant or his counsel.

3. It is also relevant to refer to the judgment of the Hon'ble Apex Court reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, wherein, the Hon'ble Apex Court has culled out certain principles and has 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

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."

4. Very recently, the Hon'ble Apex Court in the reported in (2014) 14 Supreme Court Cases 222, Surya Baksh Singh vs. State of Uttar Pradesh, has reiterated the above principles culled out in the decision cited supra and has held in paragraph No.15 as follows :-

"15. The discussion would not be complete without noticing the orders in Parasuram Patel vs. State of Orissa, (1994) 4 SCC 664 and Madan Lal Kapoor vs. Rajiv Thapar, (2007) 7 SCC 623. In neither of these cases had the appellate court taken steps available to it to ensure the attendance of the appellant. Instead, it appears that the High Court concerned had adopted the obviously less tedious approach of dismissing the appeals only because neither the appellant nor his counsel were present when the case was called on for hearing. The Court did not ruminate upon the curial malpractice which has now become endemic viz., the filing of appeals by convicts with the obvious intent to frustrate and circumvent sentences passed by criminal courts."

5. In the light of the judgments of the Hon'ble Apex Court cited supra, one thing is crystal clear that no doubt, the Court can decide the matter even in the absence of the 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. Hence, following the decisions cited supra, these Criminal Revision Cases are taken up and disposed of on merits, after hearing the learned counsel for the respondent and after perusing the materials available on record.

6. The main ground raised by the petitioners/accused in these revisions is that the petitioner in CrI.R.C.No.307 of 2015 and the complainant were friends for more than ten years and they had money transaction also for more than ten years. It is further alleged in the grounds of revision that the alleged blank cheques were given only for the purpose of security for the loan transaction of her husband/petitioner in CrI.R.C.No.307 of 2015 and subsequently, the entire loan amount has been discharged, but, the said cheques were subsequently misused by the complainant, but the said fact has not been properly appreciated by Courts below.

7. On the other hand, the learned counsel for the respondent/complainant would contend that the petitioners have admitted the issuance of the cheques and once the initial transaction is admitted by the petitioners/accused, 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 cheques were not issued for a legally enforceable debt, but, for rebutting the presumption, neither oral nor documentary evidence has been produced and hence, the judgment of Courts below are correct and it needs no interference at the hands of this Court.

8. No doubt, in this case, the petitioners/accused have admitted that the petitioner in Crl.R.C.No.307 of 2015 and the complainant were friends and they had money transaction for more than ten years. The only defence is that the blank cheques were given by the petitioners/accused only for the purpose of security. As per Section 20 of the Negotiable Instruments Act, a holder in due course is authorised or empowered to fill up an instrument so as to make it a negotiable instrument. In this case, the petitioners have admitted the entrustment of the cheques and therefore, the respondent/complainant as a holder in due course, is entitled to fill up the cheques and that cannot be questioned by the petitioners/accused. Further more, as rightly pointed out by Courts below, when the initial transaction is admitted by the petitioners/accused, 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 cheques were not issued for a legally enforceable debt. But, for rebutting the presumption, neither oral nor documentary evidence has been produced. According to the petitioners/accused, the amount has been repaid to the complainant and therefore, the transaction between the petitioners/accused and complainant came to an end. If really according to the petitioners/accused the transaction between the petitioners and the complainant came to an end, there is no explanation as to why the accused allowed the cheques to remain with the complainant. Admittedly, the petitioners have not issued the respondent with any notice seeking to return back the cheques. Further, admittedly, no document has been produced before the Court to show that the petitioners/accused asked for the return of the cheque. Considering the facts and circumstances of the case, I am of the view that the Trial Court has rightly come to the conclusion that the stand taken by the accused that the cheques were issued only for the security purpose has not been proved and has rightly convicted the petitioners/accused under Section 138 of the Negotiable Instruments Act and sentenced the petitioners/accused to undergo imprisonment as stated supra and the same came to be rightly confirmed by the Appellate Court by holding that the accused with intention to discharge the loan amount has given the alleged cheques and hence, I do not find any reason to interfere with the reasoned judgment passed by the Appellate Court and the judgments of conviction and sentence and compensation passed by the Appellate Court stand confirmed. Accordingly, these Criminal Revision Cases are dismissed. Consequently, connected Miscellaneous Petitions are

9. The Trial Court is directed to issue necessary warrant to the petitioners/ accused to secure their presence for completion of the balance sentence, if any. It is needless to mention that the period of sentence already undergone by the revision petitioners/accused is ordered to be given set off under Section 428 (c) of Cr.P.C.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

paa

To

1.The XVII Additional Sessions Judge,
Chennai.

2.The Metropolitan Magistrate,
Fast Track Court No.IV,
George Town, Chennai.

1 cc to MR.R. Dasaratha Rao, Advocate Sr.42713

Criminal Revision Case Nos.306 and 307 of
2015
and
M.P. Nos. 1 and 1 of 2015

TS (CO)
Eu 02.09.15

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