

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-07-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 358 of 2015

and M.P.No. 1 of 2015

Dr.G.Govindaraj ... Petitioner /Appellant/Accused

Versus

P.Jaichand ... Respondent/respondent/complainant

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the judgment passed by the XVIII Additional Sessions Judge, Chennai, in C.A.No.108 of 2012, dated 04.02.2015, modifying the order passed in C.C.No.2209 of 2009 on the file of the XIV Metropolitan Magistrate, Egmore, dated 22.05.2012.

For Petitioner : No Appearance

ORDER

The case of the respondent/complainant is that the petitioner/accused to discharge the loan amount of Rs.1,00,000/- borrowed on 01.10.2006 had executed Ex.P.1-Promissory Note and also given a cheque to the complainant, the same returned dishonoured. Thereafter, the accused has given a Letter of Undertaking dated 15.03.2009, undertaking to settle the loan amount on or before 16.04.2009 and for discharge of the loan amount, the accused has issued a post-dated cheque (Ex.P.3) bearing No.533645, dated 20.04.2009 for a sum of Rs.1,48,500/-. When the complainant presented the cheque for collection on 23.04.2009, the same returned with an endorsement "insufficient funds". Hence, the complainant issued a legal notice. After receiving the notice also, the accused did not come forward to pay the money and hence, the complaint. The case was taken on file in C.C.No.2209 of 2009 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai. After trial, the Trial Court, by order dated 22.05.2012, convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act and sentenced to undergo one year simple imprisonment and to pay a fine of Rs.3,000/-, in default to undergo simple imprisonment for six months. Challenging the same, the petitioner has preferred a Criminal Appeal in Crl.A.No.108 of 2012. The Appellate Court has modified the judgment by confirming the conviction passed by the Trial Court and

the sentence alone is modified directing the petitioner to pay a fine of Rs.25,000/- as fine, in default to undergo six months simple imprisonment and also directed to pay a sum of Rs.1,60,000/- as compensation to the complainant, in default, to undergo one year simple imprisonment. The petitioner is further directed to deduct the already deposited amount of Rs.1,00,000/- out of the compensation amount of Rs.1,60,000/-. Aggrieved against the same, the Criminal Revision Case is filed by the accused.

2. On 22.04.2015, when the matter was taken up, there was no representation for the petitioner and hence, the matter was directed to be posted on 27.04.2015 and again on 01.06.2015, when the matter was called, there was no representation for the petitioner and therefore, the matter was directed to be posted under the caption, "for dismissal" after two weeks. Today, when the matter is taken up, learned counsel appearing for the petitioner is not present, though, the case is listed today under the caption "for dismissal", this kind of practice is deprecated by the Hon'ble Apex in the judgment reported in (2013) 3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, and has held that the Court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so. The Hon'ble Apex Court in the said decision 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, 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. In the light of the decision cited supra, apart from that the fact remains the Appellate Court in its judgment has clearly pointed out that even before the Appellate Court the accused has not appeared continuously and here also, the petitioner nor his counsel has appeared before the Court and the petitioner is successful in dragging on the case and hence, the main Criminal Revision Case itself is taken up and disposed of on merits even at the time of admission itself, after perusing the materials available on record.

3. The only ground raised in the grounds of revision by the petitioner/accused is that there was a money transaction between him and the respondent/complainant. The accused used to give blank promissory note and blank cheque to the complainant towards security purpose for the borrowal of loan amount. The accused admitted the signature in the promissory note and blank cheques, but, according to him, they were all retained by the complainant even after due repayment of the loan amount.

4. When we analyse the entire evidence on record as well as the judgment of the Appellate Court, it is crystal clear that the petitioner/accused had loan transaction with the respondent/complainant. According to the accused, the alleged cheque (Ex.P.3) was only given as a security for the loan transaction. The Trial Court in its order has clearly pointed out that the petitioner has not even chosen to give a reply notice to the statutory notice to bring forth his case and hence, the non-giving of reply to the statutory notice is fatal to the case of the petitioner/accused. Nextly, it is seen that the petitioner/accused as per the Letter of Undertaking (Ex.P.2), dated 15.03.2009, had undertook to settle the loan amount on or before 16.04.2009, which is not denied by the accused and for discharge of the loan amount, the accused has issued a post-dated cheque (Ex.P.3) bearing No.533645, dated 20.04.2009 for a sum of Rs.1,48,500/- and the said cheque, when presented for collection got dishonoured on 23.04.2009. Infact, on the side of the defence, one Devakumar, who was working as compounder in the clinic run by accused was examined as D.W.1 for the purpose that he witnessed the complainant coming to the clinic three or four times and making payment of certain amount for the loan transaction and he has also stated that the complainant is not in the habit of giving a receipt, but, he will note the amount received in a small handbook maintained by him. The accused was examined as D.W.2 and during the cross-examination, the accused has not disputed the Letter of Undertaking, dated 15.03.2009 and he has admitted that he undertook to settle the loan amount and only sought for time and thereafter, according to him, he has settled the loan amount. But, as rightly pointed out by the Trial Court, if the alleged cheque is given as a security for the loan transaction and if really according to the petitioner/ accused, the transaction between the

petitioner/accused and the respondent/complainant came to an end by due repayment of the loan amount, what prevented the petitioner/accused from getting back the alleged cheque. Admittedly, the petitioner has not issued the respondent with any notice seeking to return back the alleged cheque and there is no explanation as to why he allowed the alleged cheque to remain with the complainant. Further, admittedly, no document has been produced before the Court to show that the petitioner/accused asked for the return of the alleged cheque. But, the accused has kept quiet all along and hence, the Trial Court has come to the conclusion that the stand taken by the accused that the cheque (Ex.P.3) was issued only as a security has not been proved and hence, the Trial Court has rightly convicted the petitioner/ accused under Section 138 of the Negotiable Instruments Act and sentenced the petitioner/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 cheque (Ex.P.3).

5. In the result, this Criminal Revision Case is dismissed confirming the judgment of conviction and sentence passed by the Appellate Court dated 04.02.2015. Consequently, connected Miscellaneous Petition is closed. The Trial Court is directed to issue necessary warrant to the petitioner to secure his presence for completion of the balance sentence. It is needless to mention that the period of sentence already undergone by the revision petitioner/accused is ordered to be given set off under Section 428 (c) of Cr.P.C.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The XVIII Additional Sessions Judge,
Chennai.
2. The XIV Metropolitan Magistrate,
Egmore, Chennai-8.

Criminal Revision Case No. 358 of 2015

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srg 03.08.2015