

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.05.2015**

CORAM:

THE HONOURABLE **MR. JUSTICE P.DEVADASS**

Criminal Revision No.499 of 2015

1.M/s.Step Exim Pvt. Ltd.
Rep. by its Director and Authorized
Signatory R.P.Vasudevan

2.R.P.Vasudevan ..Petitioners/Appellants/Accused

/vs/

G.Chandran ..Respondent/Respondent/Complainant

Prayer:-

Criminal Revision Case filed under 397 and 401 of the Code of Criminal Procedure to set aside the order dated 09.01.2015 in C.A. No.95 of 2014 on the file of the learned IV Additional Sessions Judge, Coimbatore confirming the order in S.T.C. 313 of 2012 dated 11.06.2014 passed by the learned Judicial Magistrate, FTC-II, Coimbatore.

For Petitioners: Mr.R.Ganesh Kumar

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ORDER

This revision has been directed by the accused in a cheque bouncing case.

2.The respondent prosecuted the appellant/accused in a cheque bouncing case before the learned Judicial Magistrate, Fast Track Court No.II, Coimbatore in S.T.C.No.313 of 2012.

3.After considering the arguments of both and on perusing the evidence, the learned Magistrate convicted the accused under Section 138 of Negotiable Instrument Acts and sentenced the first accused to undergo two months simple imprisonment and also directed him to pay a fine of Rs.5,000/- and sentenced the second accused to undergo one year simple imprisonment and also directed him to pay a fine of Rs.5,000/-.

4.Aggrieved, the accused directed C.A.No.95 of 2014. It was pending before the learned IV Additional Sessions Judge, Coimbatore. The appellants were on appeal bail.

5.On 09.01.2015, the appellate Court dismissed the appeal passing the following order:-

Order

"This is an appeal against the order passed by the Fast Track Court No.II at Judicial Magistrate level, Coimbatore in STC No.313/2012 dated 08.07.2014.

2.Appellants not present. No

representation for appellants. Respondent and his counsel are present. Hence appeal is dismissed for default.

3.In the result, the appeal is dismissed for default"

6.The learned counsel for the revision petitioners contend that the learned counsel for the appellants could not present before the Appellate Court for reasoning beyond their control. However, without giving any opportunity, the Appellate Court dismissed the appeal. It has disposed of the Criminal Appeal *ex parte* like a civil case.

7.As the matter lies in a narrow campus and it could be disposed of on legal issue itself, without wasting much time, I propose to dispose of this revision today itself.

8.As against the judgment of a Criminal Court recording conviction and awarding sentence, right of appeal has been provided under Section 372 of Cr.P.C. Right of appeal is statutory. Disposal of the appeal has been elaborately dealt with in Chapter XXXIX of the Code of Criminal Procedure, 1973. *Ex parte* disposal is known in civil law but unknown in criminal law, more particularly, in a criminal appeal, a person has been convicted. Article 21, Constitution of India granted life and liberty to everyone. It can be taken away by a

procedure established by law. The procedure must be 'fair', 'reasonable' and 'not unjust' (**see Menaka Gandhi vs. Union of India (AIR 1978 SC 597)**). Disposal of a criminal appeal not on merit but *ex parte* will militate against said principles.

9.The disposal of criminal appeal could take different ways. Even at the first stage itself, if there is no case, no merit at all, the Appellate Court can dispose of the appeal summarily. But, it must record its reasoned finding. It is possible if it refers to the merit of the matter, the judgment of the appellate Court must disclose that the appellate Judge has applied his mind to the record of the case. Sometimes, an appellant will get appeal the relief of appeal bail under Section 389 of Cr.P.C and thereafter forget his appeal, Appellate Court, even his counsel.

10.As regards the disposal of the criminal appeal, it could be classified under two categories. One is, where the appellant is in jail and the other one is appellant on bail. In some cases, the appellant may not be assisted by a learned counsel. In some cases, when the appeal is taken up for disposal, the learned counsel for the appellant may not appear. In such circumstances, what the Appellate Court has to do. This has been recently dealt with by the Hon'ble Supreme Court

in ***Surya Baksh Singh Vs. State of Uttarpradesh*** reported in **2015(1) SCC Crl. 313**. In this connection, the two Judge Bench referred to a three judge Bench judgment of the Hon'ble Supreme Court in **K.S.Panduranga vs. State of Karnataka (2013 (3) SCC 721)** and observed as under:-

"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."

11. In **Surya Baksh Singh** case, the Hon'ble Supreme Court laid down the guidelines as to the disposal of the criminal appeal, when the counsel for the appellant was not present. It is not that when the counsel for the appellant was not present, the Court cannot dispose of the appeal. The Court can adjourn the appeal to enable the counsel to appear or without adjourning the criminal appeal, the Court can dispose of the criminal appeal, but, after fully referring to the evidence on record, either it can allow the appeal or dismiss it. But, it must dispose of the appeal on merit.

12. Now, applying the said principle, it is clear that the Appellate Court has disposed of the appeal like a Civil Court. It is an ex parte disposal. Not at all merit of the matter has been considered. There was no discussion in the impugned order disclosing that the appellate Judge has considered the evidence and disposed of the matter on merit.

13. Thus, the disposal of the criminal appeal by the Appellate Judge is not in accordance with law. It is against principles

of natural justice. It is against fundamental right of the accused. Consequently, the appellants have been condemned unheard. They were denied basic justice.

14. In view of the foregoing, this revision is allowed. The order of the learned IV Additional Sessions Judge, Coimbatore, dated 09.01.2015 dismissing the criminal Appeal in CrI.A.No.95 of 2014 is set aside. C.A.No.95 of 2014 is restored to file. The learned IV Additional Sessions Judge, Coimbatore will dispose of the criminal appeal following the guidelines of the Hon'ble Supreme Court given in ***Surya Baksh singh vs. State of Uttarpradesh in (2015) 1 SCC (Crl.) 313.*** The appellants or their counsel will appear before the said Appellate Court on 30.06.2015. The appellants will also give notice of hearing to the respondent. They will also file proof of service before the said Court. The Appellate Court shall dispose of the criminal appeal in a manner known to law.

28.05.2015

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Note to registry:-A copy of this judgment shall be sent to the Director, Tamil Nadu State Judicial Academy, Chennai.

Index : Yes

Internet : Yes Note: Issue order copy on 08.06.2015

P.DEVADASS, J.

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To

1.The IV Additional District and Sessions Judge,
Coimbatore

2.The Judicial Magistrate,
FTC-II, Coimbatore.

3.The Section Officer,
Criminal Section,
High Court, Madras.

4.The Director, Tamil Nadu State Judicial Academy,
Greenways Road, Chennai-28.

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