



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.06.2015

Coram

The Hon'ble Mr. Justice B. Rajendran

Crl. R.C. Nos. 86 and 87 of 2015
and M.P.Nos. 2 and 2 of 2015

P.Selvaraj

... Petitioner
in both revisions.

Versus

P.M.Palanisamy

... Respondent
in Crl.R.C.NO.86/2005

K.Subramaniam

...Respondent in Crl.R.C.NO.87/2015

Criminal Revision Cases filed under Sections 397 and 401 Cr.P.C, against the judgments dated 05.11.2014 passed by the learned Principal Sessions Judge, Namakkal, in Crl.A.Nos.54 and 53 of 2014, confirming the orders passed by the learned Judicial Magistrate, Fast Track Court, Tiruchengode, in S.T.C.Nos.294 and 273 of 2012, dated 26.06.2014.

For petitioner : Mr.S.Viswanathan

in both revisions.

For respondent : No Appearance

in both revisions.

COMMON ORDER

These Criminal Revision Cases have been filed by the petitioner/accused aggrieved by the judgments dated 05.11.2014 passed by the learned Principal Sessions Judge, Namakkal, in Crl.A.Nos.54 and 53 of 2014, confirming the orders passed by the learned Judicial Magistrate, Fast Track Court, Tiruchengode, in S.T.C.Nos.294 and 273 of 2012, dated 26.06.2014. The said Appeals were filed against the orders passed by the learned Judicial Magistrate, Fast Track Court, Tiruchengode, in S.T.C.Nos.294 and 273 of 2012, dated 26.06.2014, 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 in each case and to pay a compensation of Rs.1,25,000/- and Rs.1,14,000/- respectively to the complainant.

2. Today, when these matters are taken up, Mr.S.Viswanathan, learned counsel for the petitioner/accused would submit that the petitioner/accused due to some unavoidable circumstances could not appear before the Appellate Court, however, the counsel appearing on his behalf appeared before the Appellate Court and represented the



case, but, the Appellate Court on finding that the appellant had not appeared before the Court even once after filing the appeals has dismissed the appeals, 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 decided 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 judgments passed by the Appellate Court dismissing the appeals without going into the merits of the case is per se illegal and it is not in accordance with the judgment of the Hon'ble Apex Court. He would further add that the accused is willing to get on with the cases immediately.

3. The respondent/complainant has been duly served, but, none-appeared, therefore, the name is printed in the cause list, even today, there is no representation for the respondent and hence, the matter is taken up and disposed of on merits.

4. On a perusal of the judgments of the Appellate Court, it is seen that the petitioner/accused did not appear before the Appellate Court on 03.09.2014, however, the counsel appearing on his behalf appeared before the Appellate Court and represented the case, but, the Appellate Court on finding that the appellant had not appeared before the Court even once after filing the appeals has dismissed the appeals, without going into the merits of the case. It is 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, 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 judgments passed by the Appellate Court are set aside and these Criminal Revision Cases are allowed and Miscellaneous Petitions are closed. The Appellate Court is directed to take the appeals 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 Principal Sessions Judge
Namakkal.

2.The Judicial Magistrate
Fast Track Court
Tiruchengode.

2 cc to Mr.S.Viswanathan , Advocate Sr.No.29807, 29806

Crl.R.C.Nos.86 & 87 of 2015

vsn(co)
pmk.26.6.2015