

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-06-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1207 of 2009
and M.P.No.1 of 2009

V.Ramesh

.. Petitioner

Versus

Ratanlal Bothra

.. Respondent

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order passed by the learned Additional District and Sessions Judge, Fast Track Court No.I, Chennai, in CrI.M.P.No.11303 of 2007, dated 12.10.2009.

For Petitioner : No Appearance

For Respondent : No Appearance

ORDER

The petitioner faced trial before the VIII Metropolitan Magistrate, George Town, Chennai, for the alleged offence under Section 138 of Negotiable Instruments Act and the Trial Court, by judgment dated 21.02.2007, convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for six months and ordered to pay compensation of Rs.6,10,000/- within a month. As against which, the petitioner preferred CrI.A.No.71 of 2007 before the Court of Sessions, Chennai. Pending appeal, the petitioner filed a petition under Section 391 Cr.P.C. before the Appellate Court in CrI.M.P.No.11303 of 2007 seeking to mark the party statement i.e., Bank Statement as additional document. The said petition was dismissed on 12.10.2009. Aggrieved against the same, the present Criminal Revision Case is filed.

2. On 15.06.2015, when the matter was taken up, there was no representation for the petitioner and the matter is directed to be posted next week under the caption, "for dismissal". On 23.06.2015, when the matter was called, again there was no representation for the petitioner and hence, the matter was directed to be posted under the caption, "for dismissal" on 29.06.2015. Even today, when the matter is taken up, learned counsel appearing for the petitioner as well as respondent are not present, 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 it 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 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, as the case is pending from 2009 and the petitioner is successful in dragging on the case, the main Criminal Revision Case itself is taken up and disposed of on merits, after perusing the materials available on record.

3. The only ground which has been raised by the petitioner in the revision is that the petitioner issued 20 cheques chronologically to the respondent at the time of entering into the Hire Purchase Agreement in the year 1999 for security purpose, out of which, 19 cheques were honoured and the left out cheque was misused after a lapse of six years and therefore, the dismissal of the petition by the Appellate Court is not correct.

4. On a careful perusal of the order of the Appellate Court, it is crystal clear that the petition seeking to mark the party statement i.e., Bank Statement from 01.01.1998 to 12.08.2005, as additional document itself has been filed belatedly. The Appellate Court, in its order, has clearly pointed out that the petitioner has admitted that the impugned cheque is one among the 20 cheques issued to the respondent, out of which, 19 cheques were honoured and the cheque in question was dishonoured. Mere filing of Bank Statement during the relevant point of time i.e., from 01.01.1998 to 12.08.2005 will neither improve nor disprove the case of the petitioner. The

petitioner has also not given any substantial reason for the non-production of the Bank Statement before the Trial Court at the earliest point of time. P.W.2 is the Bank Officer, who has produced the Bank Accounts for the period from 01.08.2005 to 31.08.2005 and the same was marked as Ex.P.7. The petitioner has not chosen to cross-examine P.W.2 with regard to the Bank Statement for the period from 01.01.1998 to 12.08.2005, which was available with him in the Bank and pointing out to the same, the Appellate Court has rightly held that the petition is the outcome of afterthought and it has been filed only to drag on the proceedings. Hence, I do not find any reason to interfere with the reasoned order passed by the Appellate Court.

5. For the foregoing discussions held, this Criminal Revision Case is dismissed and the order passed by the learned Additional District and Sessions Judge, Fast Track Court No.I, Chennai, in CrI.M.P.No.11303 of 2007, dated 12.10.2009, stands confirmed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

paa

To

1.The Additional District and Sessions Judge,
Fast Track Court No.I, Chennai,

2.The Section Officer, V.R.Section, High Court, Madras.

सत्यमेव जयते

CrI.R.C. No. 1207 of 2009

tej (co)

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