Bail Slip

The petitioner/Accused Viz., V. Mohan, was released on bail as per order of this court dated 8.4.2009 and made in MP.No.1 of 2008 in Crl.R.C.No.1567/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.06.2015

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Crl. R.C. No. 1567 of 2008

V.Mohan ... Petitioner

Versus

M.Sherifa ... Respondent

Criminal Revision Petition filed under Section 397 read with 401 of the Criminal Procedure Code against the Judgment dated 18.11.2008 made in Crl.A.No.154 of 2008 on the file of the VI Additional Judge, City Civil Court, Chennai, confirming the judgment dated 17.04.2008 made in C.C.No.2303 of 2003 on the file of the XV Metropolitan Magistrate, George Town, Chennai.

For Petitioner : Mr.K.Rajasekaran

For Respondent : Mr.R.Vijayaraghavan
for Mr.S.N.A.Hussainy

ORDER

This Criminal Revision Case is filed by the petitioner/accused questioning the correctness of the Judgment dated 18.11.2008 made in Crl.A.No.154 of 2008 on the file of the VI Additional Judge, City Civil Court, Chennai, confirming the judgment dated 17.04.2008 made in C.C.No.2303 of 2003 on the file of the XV Metropolitan Magistrate, George Town, Chennai.

2. The case of the respondent/complainant is that the complainant and accused were running a partnership firm in the name and style of "SMJ Freight Movers" and it was dissolved on 02.11.2001 and therefore, the accused has to pay Rs.15,00,000/- to the complainant. For that amount, the accused has issued a cheque for Rs.16,72,000/-, dated 18.10.2002. When the cheque was presented for collection on 07.02.2003, it returned with an endorsement "insufficient funds" on 08.02.2003. On 15.02.2003, the complainant issued a statutory notice. Since, the accused has not come forward to pay the cheque amount, a private complaint was lodged and the same was taken in C.C. No. 2303 of 2003 on the file of the XV Metropolitan Magistrate, George Town, Chennai. After trial, the Trial Court convicted the petitioner/accused under Section 138 of the Negotiable Instruments

Act and sentenced him to undergo simple imprisonment for a period of two years and to pay a sum of Rs.20,00,000/- as compensation to the complainant within three months, indefault to undergo simple imprisonment for one month, by judgment dated 17.04.2008. On appeal, the Appellate Court, while upholding the conviction, reduced the sentence from two years simple imprisonment to six months simple imprisonment and the compensation amount was reduced to Rs.17,00,000/-. Aggrieved by which, the present Criminal Revision Case is filed by the accused.

3. Today, the matter is listed under the caption, "for dismissal". Mr.K.Rajasekaran, learned counsel appearing for the revision petitioner would contend that he is not able to contact his client, actually, he has returned the bundle to him, therefore, he is not in a position to argue the case. In this matter, adjournment has been given atleast for eight hearings right from 2012. Even as early as on 28.11.2012, at the request of the learned counsel for the petitioner, the matter was adjourned by two weeks. Thereafter, on 04.12.2012, there was no representation for the petitioner, hence, the matter was adjourned by two weeks. Again, when the matter was posted on 18.12.2012, learned counsel for the petitioner sought time. Time was granted till 21.01.2013. Thereafter, the matter was posted on 21.01.2013. On that day, further time of two weeks was granted. This again continued in the years 2013 and 2014. In the year 2015, adjournment was given twice and thereafter, the matter is posted for dismissal on 09.06.2015. Even on that date, there was no representation for the petitioner. With a view to give one more opportunity to the petitioner, the matter was directed to be listed next week and that is how this matter is posted today (i.e., 25.06.2015). If the petitioner's counsel has given change of vakalat, the accused should have utilised the adjournment time granted to engage a new counsel, but, so far, no other counsel has entered appearance on behalf of the petitioner/accused. 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:
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> 19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;
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> 19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;
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> 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 no doubt, the Court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so and further, the Court can decide the matter even in the absence of the 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. In the light of the decision cited supra, as the case is pending from 2008 and the petitioner/accused is successful in dragging on the case, the main Criminal Revision Case itself is taken up and disposed of on merits, after hearing the learned counsel appearing for the respondent and also after perusing the materials available on record.

4. Mr.R.Vijayaraghavan, learned counsel appearing for the respondent/ complainant would submit that the petitioner/accused has induced the respondent/complainant to start a partnership business and it was started on 04.07.2001, for which, the complainant has invested Rs.15,00,000/-, but, however, the partnership business was dissolved on 02.11.2001 and therefore, the complainant is entitled to get back the invested amount. For return of money of Rs.16,72,800/- a cheque was issued by the accused way back on 18.10.2002. When the cheque was dishonoured, a statutory notice was issued on 15.02.2003 and since, no payment was forthcoming, the complaint was lodged.

5. On a perusal of the grounds raised in the revision, it is seen that the main ground raised by the petitioner/accused is that when the Income Tax Return filed by the respondent/complainant contains the amount due from the petitioner/accused was only Rs.12,72,000/-, whereas, the cheque was for Rs.16,72,000/- and this discrepancy indicates that the claim of the respondent/complainant is not a genuine one. The petitioner/accused has further raised a plea that the cheque was forcibly obtained by the complainant by using utmost threat and coercion. The petitioner/accused has examined, one Natarajan, as D.W.4, who was a staff of the partnership firm, to show that the cheque was obtained by the complainant by using utmost threat and coercion and hence, a complaint was given by the accused

in this regard. The Sub-Inspector of Police was examined as D.W.3, who would contend that according to the accused, the cheque was not properly accounted for. Further, according to the accused, when the amount to be paid by the accused is not correctly proved, the defence ought not to have been accepted and hence, both Courts below have wrongly come to the conclusion and convicted the accused.

6. Per contra, it is the case of the respondent/complainant that he admits that he was a partner in the partnership, for which, he has invested a huge sum and the dissolution of partnership firm was also accepted. Therefore, when it is proved that the cheque was issued by the petitioner/accused towards the discharge of any liability the initial presumption under Section 139 of the Negotiable Instruments Act will come into operation and it is in favour of the complainant and the said presumption is a rebuttable presumption and it has to be rebutted by the accused by letting in proper evidence. Merely because, there is a discrepancy regarding the amount in the Income Tax Return filed by the complainant, that cannot take away the right of parties, when there is consensus between the parties regarding the amount, for which, the cheque was given. Further, according to the complainant, in the complaint given by the accused on 15.03.2004, it is stated that the cheque has been stolen away by the complainant and now, it is tried to be misused by the complainant, whereas, D.W.4, who was the staff of the partnership firm, would clearly depose to the effect that the cheque was forcibly obtained by the complainant by using threat and coercion and therefore, the private complaint was given.

7. From the facts narrated above, it is clear that the alleged cheque alleged to have been given by the accused to the complainant is dated 18.10.2002 and when it was presented for collection on 07.02.2003,it got dishonoured, for which, a statutory notice was issued to the accused on 15.02.2003, after which, since, the accused has not come forward to pay the amount, the complaint for the offence under Section 138 of the Negotiable Instruments Act was given by the complainant in the year 2003, whereas, a complaint-Ex.D.4 was lodged by the petitioner/accused only in the year 2004 i.e., on 15.03.2004 alleging that the cheque was stolen by the complainant i.e., nearly one year after the issuance of the statutory notice dated 15.02.2003. If the cheque was really stolen by the complainant as alleged by the accused, it is not known as to what prevented the accused from giving the complaint immediately after the incident and what is the purpose of giving the complaint belatedly, that too, nearly one year after the issuance of the statutory notice and this would clearly go to show that the complaint given by the petitioner/accused is only an afterthought and this discrepancy in respect of the very averment regarding the theft of cheque has been rightly pointed out by the Courts below. Apart from that, the small discrepancy with regard to the amount found in the Income Tax Return filed by the complainant cannot be a reason to say that the complainant's claim is not a genuine one, especially, when there is a clear consensus between the parties regarding the amount, for which, the cheque was given and therefore, on merits, the Appellate Court has rightly held that the accused is found guilty for the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him to undergo the imprisonment and also directed thim to

pay compensation as stated supra. Hence, I do not find any reason to interfere with the reasoned judgment passed by the Appellate Court, dated 18.11.2008. This Criminal Revision Case is dismissed. The Trial Court is directed to issue necessary warrant to the petitioner/ accused to secure his presence for completion of the balance sentence and also for payment of the compensation amount as directed by the Appellate Court.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

paa

To

1.The VI Additional Judge,
City Civil Court,
Chennai.

2.The XV Metropolitan Magistrate,
George Town, Chennai.

+1cc to M/s. S.N.A. Hussain, Advocate, S.R.No.31669

MP(CO)
EU(09/07/2015)