

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-08-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 369 of 2009

M.Rajendran
Rep. by his Power Agent
Mr.T.Ravikanth
S/o.Mr.Thangavel
No.70/14, Thulasi Nagar
Pudunapalayam
Chennai-600 103.

.. Petitioner/Complainant

Versus

R.Ravi Chandran

.. Respondent/Accused

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the order passed by the learned Judicial Magistrate, Ambattur, in C.C.No. 497 of 2008, dated 23.01.2009.

For Petitioner : No Appearance

For Respondent : No Appearance

ORDER

The case of the petitioner/complainant is that the respondent/accused availed loan of Rs.10,000/- and to discharge his liability, he has given two cheques. When the cheques were presented for collection by the complainant, the same were returned dishonoured with an endorsement "Insufficient Funds". After issuing statutory notices, since, there was no reply, the complainant has filed a private complaint against the respondent/accused for the alleged offence under Section 138 of Negotiable Instruments Act and it was pending trial before the learned Judicial Magistrate, Ambattur, in C.C.No.497 of 2008. From 29.12.2008 to 23.01.2009, when the matter was called neither the complainant was present nor he has taken steps to serve summons on the respondent and hence, the private complaint filed under Section 204(4) of Cr.P.C. was dismissed and the respondent was acquitted. Aggrieved against the same, this Criminal Revision Case is filed.

2. Today, though, the matter is listed under the caption "Old Year Cases", when the matter is taken up, there is no representation for the petitioner/ complainant. The Hon'ble Apex Court in the judgment reported in (1994) 4 Supreme Court Cases 664, Prasuram Patel

& another vs. State of Orissa, has held that the Criminal Appeal cannot be dismissed for default in appearance of the appellant, but, the Court must decide the matter on merits even in the absence of the appellant or his counsel.

3. It is also 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, the Hon'ble Apex Court has culled out certain principles and has 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."

4. Very recently, the Hon'ble Apex Court in the reported in (2014) 14 Supreme Court Cases 222, Surya Baksh Singh vs. State of Uttar Pradesh, has reiterated the above principles culled out in the decision cited supra and has held in paragraph No.15 as follows :-

"15. The discussion would not be complete without noticing the orders in Parasuram Patel vs. State of Orissa, (1994) 4 SCC 664 and Madan Lal Kapoor vs. Rajiv Thapar, (2007) 7 SCC 623. In neither of these cases had the appellate court taken steps available to it to ensure the attendance of the appellant. Instead, it appears that the High Court concerned had adopted the obviously less tedious approach of dismissing the appeals only because neither the appellant nor his counsel were present when the case was called on for hearing. The Court did not ruminate upon the curial malpractice which has now become endemic viz., the filing of appeals by convicts with the obvious intent to frustrate and circumvent sentences passed by criminal courts."

5. In the light of the judgments of the Hon'ble Apex Court cited supra, one thing is crystal clear that no doubt, 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. Hence, following the decisions cited supra, the main Criminal Revision Case itself is taken up and disposed of on merits, after perusing the materials available on record, since, there is no representation for the respondent also.

6. On a careful perusal of the order of the Trial Court, it is crystal clear that the Trial Court has taken several precautionary steps before passing the order dismissing the complaint. In fact, the Trial Court has issued a notice to the complainant in Dis.No.110 of 2009, dated 20.01.2009, calling upon the complainant to appear for the hearing on 23.01.2009, as he has not appeared before the Trial Court earlier from 29.12.2008 to 23.01.2009 and he has not taken steps for payment of process fee. In spite of the same, the complainant has not appeared before the Court and he has not taken proper steps for payment of process fee and to serve summons on the accused. The complaint has been pending from 2008. When the matter was taken up before the Trial Court on 23.01.2009, the complainant was absent and hence, the private complaint filed under Section 204 (4) Cr.P.C. was dismissed by the Trial Court, by observing as follows:-

"Complainant called absent. Petition not filed. Steps (or) process not filed. In spite of Notice complainant called absent. Complaint dismissed u/s. 204(4) Cr.P.C".

7. At this juncture, it is relevant to refer to Section 204 (4) of Cr.P.C., which reads as under:-

"204. Issue of process

- (1) ..
- (2) ..
- (3) ..

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint. .."

A reading of the above provision makes it clear that if the process fee is not paid within a reasonable time, the Magistrate is vested with power to dismiss the complaint. Here is a case, even though, the complaint is pending before the Trial Court from 2008, the petitioner/complainant has not chosen to appear before the Trial Court and he has not taken proper steps to serve the summons on the accused by paying the process fee and therefore, as per Section 204 (4) Cr.P.C., the Trial Court has rightly dismissed the private complaint. The non-appearance of the complainant continuously before the Trial Court shows that the complainant is not interested in pursuing the matter further and therefore, such kind of attitude of

the complainant should be nipped in bud and hence, I do not find any reason to interfere with the reasoned order of the Trial Court. This Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar

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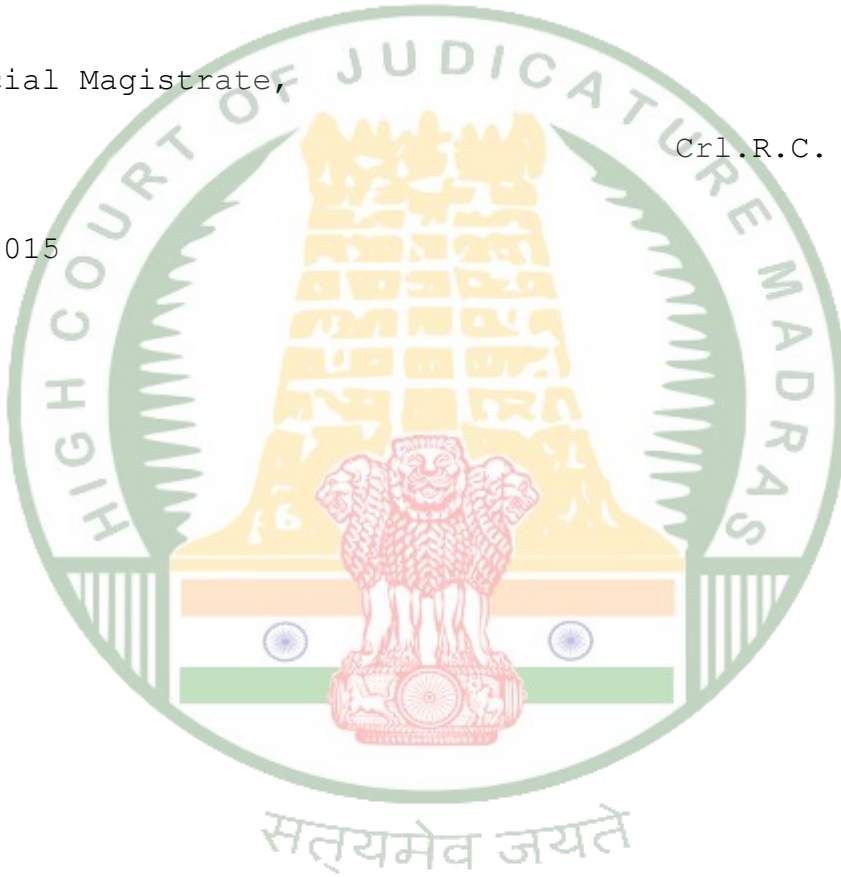
Sub Assistant Registrar

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To
The Judicial Magistrate,
Ambattur.

Crl.R.C. No. 369 of 2009

bvr (co)
pmk.18.9.2015



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