

BAIL SLIP

The Petitioner (in Crl.R.C.No.1409/2012)/Accused namely P.Vasanthakumari was ordered to be released on bail by order of this Court dated 26.11.2012 and made in MP.No.2/2012 in Crl.R.C.No.1409/2012.

The Petitioner(in Crl.R.C.No.1413/2012)/Accused namely Dinesh was ordered to be released on bail by order of this Court dated 27.11.2012 and made in MP.NO.2/2012 in Crl.R.C.No.1413/12.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-10-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos. 1409 and 1413 of 2012

P.Vasantha Kumari .. Petitioner in
Crl.R.C.No. 1409 of 2012

Dinesh .. Petitioner in
Crl.R.C.No. 1413 of 2012

Versus

Nadarajan .. Respondent in both
revisions/Complainant

Criminal Revision Cases are filed under Section 397 read with 401 of Cr.P.C. against the Judgments of conviction and sentence dated 20.09.2012 passed in Crl.Appeal Nos. 111 and 110 of 2011 on the file of the III Additional District & Sessions Judge, Salem, confirming the judgments of conviction and sentence dated 28.10.2011 passed in S.T.C. Nos. 142 and 138 of 2008 on the file of the Judicial Magistrate No.III, Salem.

For Petitioners : Mr.C.K.M.Appaji
in both revisions

For Respondent : No Appearance
in both revisions

COMMON ORDER

The case of the prosecution is that the petitioners/accused borrowed a sum of Rs.50,000/- each from the complainant on 15.12.2007 and 01.12.2007 respectively to meet out their family

needs. On the same day, to discharge the debt, the accused have signed and each of them have issued a post-dated cheque for Rs.50,000/-, dated 15.12.2007. When the complainant presented the cheques for collection on 24.12.2007, the same got dishonoured for want of sufficient funds. Hence, the complainant issued statutory notices. Though, the accused received the notices, neither they came forward to repay the amount nor they came forward with a reply. Hence, the complaints. On the basis of the complaints given by the respondent/complainant cases were registered against the petitioners/accused for the offence punishable under Section 138 of Negotiable Instruments Act. Ultimately, after trial in S.T.C.Nos.142 and 138 of 2008, the Trial Court by judgments dated 28.10.2011, convicted the accused for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced them to undergo six months simple imprisonment and to pay fine of Rs.1,000/-, in default to undergo simple imprisonment for one month. Aggrieved by the same, the accused have preferred Crl.A. Nos.111 and 110 of 2011 before the learned III Additional District and Sessions Judge, Salem, and the same were dismissed by judgment, dated 20.09.2012, thereby, confirming the judgment of conviction and sentence passed by the Trial Court. Aggrieved against the same, the petitioners/accused have filed the present Criminal Revision Case.

2.Mr.C.K.M.Appaji, learned counsel appearing for the petitioners/accused would submit that he is not arguing the case on merits but confined his argument only on sentence. He would further submit that the accused are the sole breadwinners of the family and they have to take care of their family members and that because of the conviction, the accused, who were Government Servants, have already lost their job, therefore, leniency may be shown, as they now repent for the offence. He would further add that the accused are willing to pay back the cheques amount, therefore, they pleaded for showing leniency in reduction of sentence.

3. Today, when the matters are taken up, there is no representation for the respondent/complainant. The Hon'ble Apex Court in the decision reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, 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 no doubt, the Court can decide the matter even in the absence of the parties or their counsel, but, only criteria is that the case should be decided on merits 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, the main Criminal Revision Case itself is taken up and disposed of on merits, after hearing the learned counsel appearing for the petitioners/accused and also after perusing the materials available on record.

4. Taking into consideration of the fact that the learned counsel appearing for the petitioners is not arguing the matter on merits but he is confining his argument only on the question of sentence imposed on the petitioners by the Appellate Court and also the fact that the petitioners/accused are the sole breadwinners of the family and they have to take care of their family members and also the fact that they are now willing to pay back the cheques amount, I am of the view that some leniency can be shown to the petitioners in reducing the sentence. Accordingly, while confirming the conviction imposed by the Appellate Court, taking into consideration that the cheques are of the year 2007, the sentence alone is modified to the effect, the petitioner/accused in CrI.R.C.No.1409 of 2012, is directed to deposit double the cheque amount viz., Rs.1,00,000/- (Rupees One Lakh only) as compensation, instead of the imprisonment and compensation awarded by the Appellate Court, to the credit of S.T.C.No.142 of 2008 on the file of the Judicial Magistrate No.III, Salem and the petitioner/accused in CrI.R.C.No.1413 of 2012 is directed to deposit double the cheque amount viz., Rs.1,00,000/- (Rupees One Lakh only) as

compensation, instead of the imprisonment and compensation awarded by the Appellate Court, to the credit of S.T.C.No.138 of 2008 on the file of the Judicial Magistrate No.III, Salem, within a period of three months from the date of receipt of a copy of this order, failing which, the judgments passed by the Appellate Court regarding the sentence shall stand revived and the respondent/ complainant is at liberty to approach the Trial Court, which shall take steps to secure the petitioners/accused to undergo the remaining period of sentence.

5. With the above modification in sentence, these Criminal Revision Cases are partly allowed.

-Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The III Additional District
& Sessions Judge, Salem.

2.-Do-Thro' The Principal Sessions
Judge, Salem

3.The Judicial Magistrate No.III,
Salem.

4.-do-Thro'The Chief Judicial Magistrate
Salem

5.The Superintendent Central Prison, Salem

Copy to:

The Section Officer,
Criminal Section, High Court, Madras-104

+2 ccs to Mr.C.K.M.Appaji Advocate sr.57672,57671/15
Criminal Revision Case Nos. 1409 and 1413 of 2012

aa19/11/2015