IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-08-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.516 of 2009
and
M.P. Nos. 1 and 2 of 2009

R.Sathish Saravanan
S/o.N.M.Raghu Raman
Proprietor of Sri Ram Chemicals
No.441/E, BPL Tower Street
Vallalar Nagar
Navaloor, Ranipet
Vellore District .. Petitioner/Accused

Versus

Pon Pure Chem (P) Limited
rep. by Mr.Raja
Son of Arunachalam
No.32, H-Block, 15th Main Road
Anna Nagar
Chennai. .. Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the judgment of conviction and sentence passed by the VI Additional Principal Sessions Judge, City Civil Court, Chennai, in Crl.A.No.4 of 2009, dated 21.04.2009, confirming the judgment of conviction and sentence passed by the XIII Metropolitan Magistrate, Egmore, Chennai, in C.C.No. 7639 of 2006, dated 10.12.2008.

For Petitioner : No Appearance

For Respondent : No Appearance

ORDER

According to the petitioner/accused, he had purchased chemicals from the respondent/complainant and since, the said materials were not in regular standard, there arose a dispute with regard to payment of amount. According to the petitioner, the cheques for Rs.2,69,500/- and Rs.4,30,986/- dated 28.04.2006 and 10.05.2006 respectively were given to the respondent for security purpose in the course of business transaction and the said cheques were misused by the respondent by trying to encash the same, by presenting the same for collection, but, the said cheques returned due to the reason "stopped payment". Thereafter, the respondent has issued legal notice and since, the petitioner has not forward to pay the amount, the complaint was lodged. The case was taken on file in C.C.No. 7639 of 2006 on the file of the XIII Metropolitan Magistrate, Egmore, Chennai. After trial, the Trial Court, by judgment dated 10.12.2008, convicted the petitioner for an offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of six months and to pay a sum of Rs.2,69,500/- and Rs.4,30,986/- to the complainant as compensation. Aggrieved against which, the accused has preferred Crl.A.No.4 of 2009 before the VI Additional Principal Sessions Judge, City Civil Court, Chennai. The Appellate Court, by judgment, dated 21.04.2009, has dismissed the said appeal, thereby, confirming the judgment passed by the Trial Court. Aggrieved against the same, this Criminal Revision Case is filed.

2. Today, though, the matter is listed under the caption "for dismissal", when the matter is taken up, there is no representation for the petitioner. 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:
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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 adjorn 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;
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> 19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;
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> 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. The main ground raised by the petitioner in this revision is that in the course of business transaction, the alleged cheques were given only for the purpose of security, but, the said cheques were subsequently misused by the complainant, but the said fact has not been properly appreciated by Courts below.

7. No doubt, in this case, the petitioner has purchased chemicals from the respondent and since, the said materials were not in regular standard, there arose a dispute with regard to payment of amount. According to the petitioner, the cheques in dispute were given to the respondent for security purpose in the course of business transaction and the same were misused by the respondent by trying to encash the cheques and hence, when the cheques were presented for collection the same returned for "stopped payment" by the accused. The only defence is that the cheques were given by the petitioner/accused only for the purpose of security. In this case, the petitioner has admitted the entrustment of the cheques and therefore, the respondent/complainant as a holder in due course, is entitled to fill up the cheques and that cannot be questioned by the petitioner/accused. Further more, here the transaction between the parties is admitted, payment of some amount due is admitted, but, there is only difference in payment of amount, naturally, when the cheques were issued for a legally accepted payment, as clearly pointed by the Courts below, the "stopping payment" of cheques, would definitely amount to an offence, whereas, contra as rightly pointed out by Courts below, when the initial transaction is admitted by the petitioner/accused, the presumption as contemplated under Section 139 has to be raised in favour of the complainant and it is for the

accused to rebut the presumption that the cheques were not issued for a legally enforceable debt. But, for rebutting the presumption, neither oral nor documentary evidence has been produced. Considering the facts and circumstances of the case, I am of the view that the Trial Court has rightly come to the conclusion that the stand taken by the accused that the cheques were issued only for the security purpose has not been proved and has rightly convicted the petitioner/ accused under Section 138 of the Negotiable Instruments Act and sentenced the petitioner/ accused to undergo imprisonment as stated supra and the same came to be rightly confirmed by the Appellate Court by holding that the accused with intention to discharge the amount due has given the alleged cheques and hence, I do not find any reason to interfere with the reasoned judgment passed by the Appellate Court and the judgment of conviction and sentence and compensation passed by the Appellate Court stand confirmed. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petitions are closed.

8. The Trial Court is directed to issue necessary warrant to the petitioner/ accused to secure his presence for completion of the balance sentence, if any. It is needless to mention that the period of sentence already undergone by the revision petitioner/accused is ordered to be given set off under Section 428 (c) of Cr.P.C.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2.The XIII Metropolitan Magistrate,
Egmore
Chennai.

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and
M.P. Nos. 1 and 2 of 2009

RJ(CO)
EU 14.09.15