

Bail slip

S.Mohan and Vijayalakshmi petitioners herein accused in cc.No.2/06 on the file of the D.M.Court J.M Kodumudi) were released on bail by the order of this court dt.24/07/09 and made in wp. 1/09 in RC.573/09 pending on this file of this court

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2015

CORAM:

THE HON'BLE MR.JUSTICE B. RAJENDRAN
CRL. R.C. No. 573 of 2009

1.S.Mohan

2.Vijayalakshmi

.. Petitioner

Versus

1.D.Rajasampathkumar

2.The Public Prosecutor
Erode District
Erode.

.. Respondent

Criminal Revision Case filed under Section 397 read with 401 of the Criminal Procedure Code, against the Judgment dated 11.05.2009 passed in Crl.A. No. 19 of 2009 on the file of the learned Additional District Court-cum-Fast Track Court No.I, Erode, confirming the order dated 08.12.2008 passed in C.C. No. 2 of 2006 on the file of the learned District Munsif-cum-Judicial Magistrate, Kodumudi.

For Petitioners : Mr.G.Anbuchezeian
for Mr.K.Gandhikumar

For Respondents : Mr.V.S.Kesavan
for R.1

Mr.V.Arul
Government Advocate (Criminal Side)
for R.2

ORDER

The case of the prosecution is that on 13.09.2005, the petitioner accused Nos. 1 and 2 were alleged to have borrowed a sum Rs.1,00,000/- from the complainant to meet out their urgent need and partial discharge of the said liability, accused Nos.1 and 2 issued cheque dated 13.10.2005 in favour of the complainant. When the cheque was presented for collection by the complainant, it returned for "Insufficient Funds". The statutory notice was issued by the complainant to accuse Nos.1 and 2 on 02.11.2005. After receipt of notice, accused Nos. 1 and 2 neither sent a reply nor paid the cheque amount within the time of 15 days. Hence, the complaint. On the basis of the complaint given by the first respondent/complainant a case was registered against the petitioners/accused Nos.1 and 2 for the offence punishable under Section 138 r/w. 142 of the Negotiable Instruments Act. Ultimately, after trial C.C.No.2 of 2006, the Trial Court by judgment dated 08.12.2008 convicted both accused for the offence punishable under Section 138 r/w.142 of the Negotiable Instruments Act and sentenced them to undergo simple

imprisonment for one year each and to pay a compensation of Rs.1,00,000 to the complainant within three months. Aggrieved by the same, the accused Nos.1 and 2 have preferred CrI.A. No.19 of 2009 before the learned Additional District Judge-cum-Fast Track Court-I, Erode, and the same was dismissed by judgment dated 11.05.2009, thereby, confirming the judgment of conviction and sentence passed by the Trial Court. Aggrieved by the judgment passed by the Appellate Court, the petitioner has filed the present Criminal Revision Case.

2. On 26.08.2015, when the matter was taken up, there was no representation for the petitioners and hence, the matter was directed to be posted on 02.09.2015 under the caption, "for dismissal". Even today when the matter is taken up, learned counsel appearing for the petitioner is not present and on his behalf, a junior counsel represented the matter and sought for an adjournment, though, the case is listed today under the caption "for dismissal", this kind of practice is deprecated by the Hon'ble Apex in the judgment reported in (2013) 3 Supreme Court Cases 72 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:

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 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 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 petitioners are successful in dragging the case, the main Criminal Revision Case itself is taken up and disposed of on merits, after perusing the materials available on record.

3. At this point of time, learned counsel appearing for the petitioners would submit that the petitioners are willing to pay back the cheque amount, but, he only needs time for payment, therefore, pleaded for showing leniency in reduction of sentence.

4. Mr.V.S.Kesavan, learned counsel appearing for the first respondent would submit that instead of sending both accused to jail, he will be satisfied, if the petitioners are directed to pay double the cheque amount.

5. Heard both sides and I have perused the materials on record. In consent, the main Criminal Revision Case itself is taken up for final disposal.

6. Taking into consideration of the submission made by the learned counsel for the petitioners that the petitioners/accused Nos. 1 and 2 are willing to pay back the cheque amount, I am of the view that so much 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 cheque is of the 2005, the sentence alone is modified to the effect, the petitioners/accused Nos. 1 and 2 are directed to pay double the cheque amount, viz., Rs.2,00,000/- as compensation, instead of the imprisonment and compensation awarded by the Appellate Court, which has to be directly paid by the petitioners/accused Nos.1 and 2 to the first respondent/complainant within a period of three months from the date of receipt of a copy of this order, failing which the judgment passed by the Appellate Court shall stand revived and the first respondent/complainant is at liberty to approach the Trial Court which shall take steps to secure accused Nos.1 and 2 to undergo the remaining period of sentence.

7. With the above modification in sentence, this Criminal Revision Case is partly allowed.

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Assistant Registrar

//True copy//

Sub Assistant Registrar

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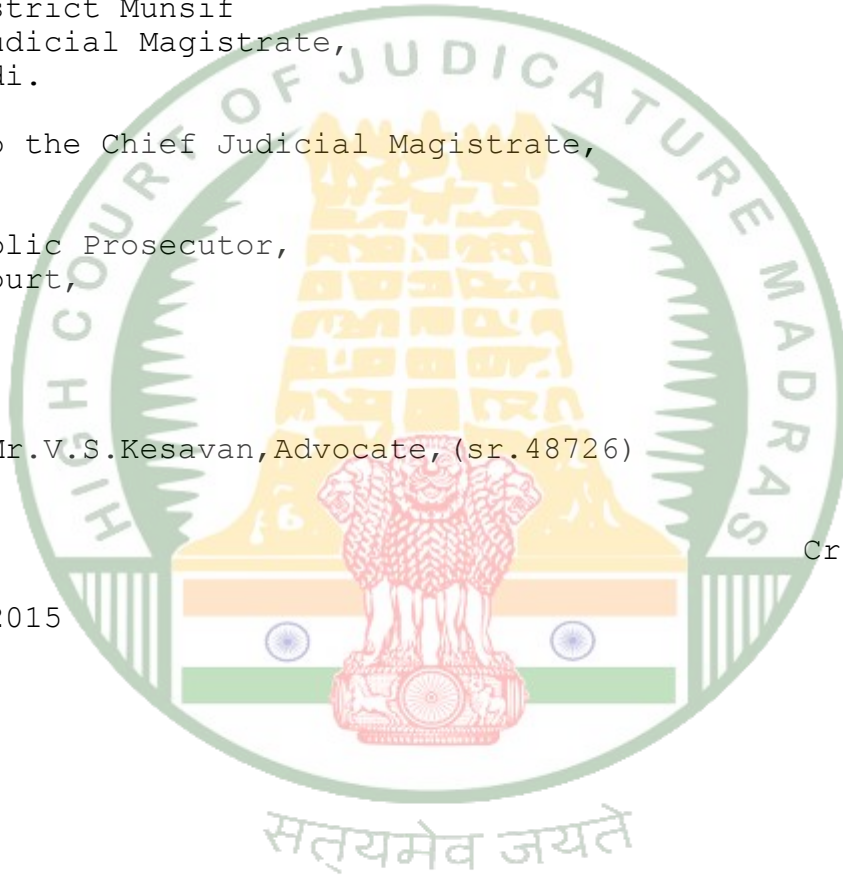
To

1. The Public Prosecutor
Erode District,
Erode.
2. The Additional District Court
-cum-Fast Track Court
No.I, Erode.
3. The District Munsif
-cum-Judicial Magistrate,
Kodumudi.
4. Do thro the Chief Judicial Magistrate,
Erode.
5. The Public Prosecutor,
High court,
Madras.

+1 cc to Mr.V.S.Kesavan,Advocate, (sr.48726)

KSJ(co)
cp 12/10/2015

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