

Bail Slip

The petitioner/Accused namely Kumar was directed to released on bail vide order dated 24.06.2008 made in CrI.M.P.No.2/08 in CrI.R.C.NO.696/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-06-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 696 of 2008

Kumar ... Petitioner

Versus

Muthu Narayanan ... Respondent

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order dated 03.03.2008 passed in CrI.A. No. 65 of 2007 on the file of the learned Additional District Sessions Judge, Fast Tract Court No.III, Vridhachalam, confirming the judgment of conviction and sentence passed in C.C. No. 86 of 2006 on the file of the Judicial Magistrate No.I, Vridhachalam, dated 28.06.2007.

For Petitioner : M/s. C. Ramakumar

For Respondent : Mr.V.Raghavachari

ORDER

The petitioner/accused is alleged to have borrowed a sum of Rs.4,00,000/- from the respondent/complainant and issued a cheque to the respondent. When the respondent presented the cheque for collection, the same returned with an endorsement "Account Closed". After issuing a statutory notice, the respondent filed a case under Section 138 of Negotiable Instruments Act against the petitioner in C.C.No.86 of 2006 before the learned Judicial Magistrate No.I, Vridhachalam. After trial, the petitioner was convicted for the offence under Section 138 of Negotiable Instruments Act by judgment dated 28.06.2007 in C.C. No.86 of 2006 passed by the learned Judicial Magistrate No.I, Vridhachalam and sentenced to undergo simple imprisonment for a period of six months. Aggrieved by the same, the petitioner/accused filed CrI.A. No. 65 of 2007 and the same was dismissed by the Additional District Sessions Judge, Fast Tract Court No.III, Vridhachalam, by confirming the judgment of Trial Court, by judgment dated 03.03.2008, against which the present Criminal Revision Case is filed.

2. Today, when the matter is taken up, there is no representation for the petitioner/accused. 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 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/complainant and also after perusing the materials available on record.

3. Mr.V.Raghavachari, learned counsel appearing for the respondent would contend that in this case, the initial transaction relating to the cheque is proved as the accused has admitted the issuance of cheque and the signature in the cheque. He would further add that the only defence raised by the petitioner/accused is that the notice sent to the petitioner/accused is not served on him and it was returned, therefore, according to the accused, it has not been properly served on him.

<https://hcservices.ecourts.gov.in/hcservices/> 4. No doubt, in this case, the transaction between the petitioner/accused and respondent/complainant, the issuance of cheque and the signature in the cheque are all admitted. The only defence

is that the the statutory notice sent to the petitioner/accused is not served on him and it was returned, therefore, according to the accused, it has not been properly served on him. In the decision rendered by the Full Bench of the Hon'ble Supreme Court in the case of C.C.Alavi Haji vs. Palapetty Muhammed and another in Appeal (Crl.) No.767 of 2007 dated 18.05.2007, it was held that when the notice was sent by registered post by correctly addressing the drawer of the cheque, the mandatory requirement of issuance of notice in terms of Clause (b) of Proviso to Section 138 of the Act stands complied with, since the notice is issued to enable the drawer of the cheque to make payment within 15 days, i.e., either he can pay the cheque amount or raise his defence rebutting any liability on his part. It was further held that even if notice is not served, the drawer of the cheque can still pay the amount and discharge his liability. Therefore, what is required under the Act is that the notice has to be sent to the correct address as contemplated under Section 27 of the General Clauses Act, 1897. When there is compliance of Section 27 of the General Clauses Act, 1897, merely because of non delivery of the statutory notice, for any reason whatsoever, especially when it is proved that it was sent to the proper and correct address, then the burden shifts on the person to prove that he was deliberately not served with the statutory notice. This judgment was followed by this Court in the decision reported in 2013-1-L.W.(Crl.)598, S.Rajan vs. E.Satyanarayanan. Therefore, in my considered opinion, both Courts below has rightly held that when it is proved that the notice was properly sent to the correct address, then the burden shifts on the accused to prove that he was deliberately not served with the statutory notice. Further, when the petitioner/accused has admitted the transaction between him and the respondent/complainant and the petitioner/accused has admitted that he has given the cheque and he has admitted the signature, the presumption under Section 139 comes into operation and it is for the accused to rebut the presumption by producing proper material evidence, when the rebuttal is not let out by the petitioner/accused by producing proper material evidence, in my considered opinion, both Courts below have rightly convicted the accused. Hence, I do not find any reason to interfere with the reasoned judgment passed by the Appellate Court dated 03.03.2008 and the judgment of the Appellate Court stands confirmed. Accordingly, 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. 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//

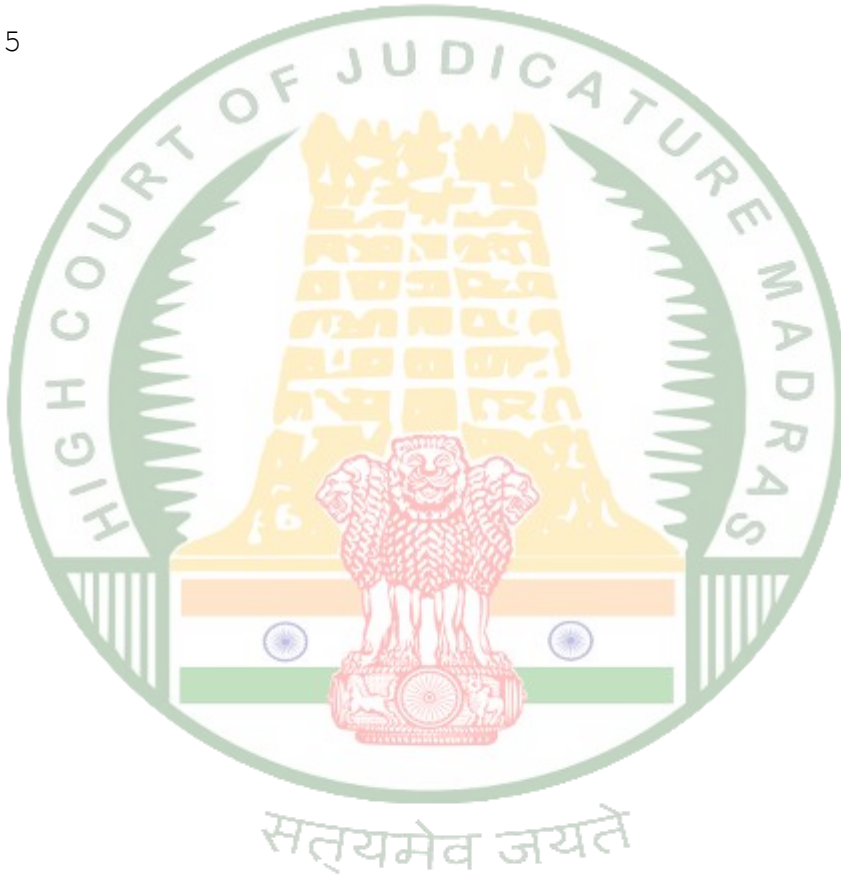
Sub Assistant Registrar

To

1. The Additional District & Sessions Judge,
Fast Tract Court No.III, Vridhachalam.
2. The Judicial Magistrate No.I
Vridhachalam.
3. The Chief Judicial Magistrate, Cuddalore.

Crl.R.C. No. 696 of 2008

RSI (CO)
Eu 06.07.15



WEB COPY