

**BAIL SHIP**

The Revision Petition in Crl.RC(MD)No. 407 of 2014 namely Gowri W/o. Kamalakkannan was directed to be enlarged on bail by order of this HON'BLE Court, dated 06.11.2014 and made in MP(MD)No.1 of 2014 in CRL.RC (MD)No. 407 of 2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

CRL.RC. (MD)No.407 of 2014

Gowri : Petitioner/Appellant/Accused

Vs.

S.Soundararajan : Respondent/Respondent/Complainant

PRAYER: Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records from the Lower Court and to duly set aside the order passed by the Additional District and Sessions Judge, Pudukkottai, in C.A.No.22 of 2012, dated 18.07.2014, confirming the conviction of the Judicial Magistrate, Pudukkottai District, in S.T.C.No.947 of 2008, dated 21.05.2012.

For Petitioner : Mr.A.Thiruvadikumar for M/S.P.SARAVANAN

For Respondent : Mr.D.Rameshkumar

O R D E R

The Revision Petitioner herein is the accused in S.T.C.No.947 of 2008, on the file of the Court of Judicial Magistrate, Pudukkottai and the said complaint was filed by the respondent herein seeking prosecution of the Revision Petitioner/accused for the commission of the offence under Section 138 r/w Section 142 of the Negotiable Instruments Act, 1881, alleging that he has advanced a loan of Rs.1,43,000/- to the Revision Petitioner/accused for the purpose of obtaining shares in Life Insurance Corporation of India and she has issued a cheque, dated 27.12.2007, drawn on ICICI Bank, Pudukkottai Branch, EX-P1 and the said cheque was presented and it was returned with an endorsement "funds insufficient" and thereafter, a statutory notice was issued and in spite of the same, the Revision Petitioner/accused did not pay the amount payable to the respondent/private complainant and hence, he has filed the said private complaint.

2. During the course of trial, the respondent/private complainant has examined himself as PW-1 and marked EX-P1 to EX-P7 and the accused was questioned under Section 313(1) of the Code of Criminal Procedure with



regard to the incriminating evidences tendered by the respondent/private complainant and she denied it as false and on her behalf, no oral evidence was let in and no documents were marked.

4. The Trial Court, on a careful consideration of all the documents, has found her guilty for the commission of offence under Section 138 r/w Section 142 of the Negotiable Instruments Act, 1881 and imposed six months simple imprisonment and aggrieved by the conviction and sentence, she has preferred C.A.No.22 of 2012, on the file of the Court of Additional District and Sessions Judge, Pudukkottai, which was, vide Judgment dated 18.07.2014, confirmed by the Lower Appellate Court.

5. Heard the learned counsel appearing for the Revision Petitioner/accused and the submissions made by the learned counsel for the respondent/private complainant.

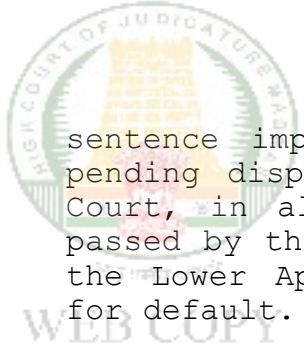
6. On a perusal of the impugned Judgment, it is seen that for the purpose of reply arguments, the matter was posted on several occasions and the learned counsel for the revision petitioner/accused did not appear and though the Lower Appellate Court had sent notice to the revision petitioner/accused, in spite of the same, she did not turn up and observing the non-co-operation on the part of the Revision Petitioner/accused, the Lower Appellate Court has dismissed the appeal, vide impugned Judgment dated 18.07.2014 and challenging the same, the revision petitioner/accused has filed the present Criminal Revision Case.

7. Mr.A.Thiruvadikumar, learned counsel for the petitioner has drawn the attention of this Court to the Judgment of the Hon'ble Supreme Court of India in **Bani Singh Vs. State of U.P, [1996 (4) SCC 664 : 1994 SCC [Cr1] 848]** and would submit that the course to be followed in case of absence of a convict or his pleader in an appeal against conviction is to dispose of the appeal, after perusing the records and Judgment of the Trial Court and it cannot dismiss the appeal for default and hence, prays for setting aside the impugned Judgment and remanding the matter back to the Lower Appellate Court for disposal, on merits.

8. Per contra, Mr.D.Rameshkumar, learned counsel for the respondent/private complainant, would submit that though enough indulgence was shown to the revision petitioner/accused, calling upon her to appear before the Lower Appellate Court, she did not respond and left with no other option, the Lower Appellate Court has dismissed the Criminal Appeal for default and prays for dismissal of this Criminal Revision Case.

9. This Court, upon hearing the submissions made by the learned counsel appearing for the parties and upon perusing the impugned Judgment and the typed set of documents and in the light of the Judgment of the Hon'ble Supreme Court of India, cited supra, is of the view that the impugned Judgment passed by the Lower Appellate Court is to be set aside and the matter has to be remitted back for fresh adjudication on merits.

10. As per the above stated position of law, the course to be followed in case of absence of a convict or his pleader in an appeal against conviction, is to dispose of the appeal, on merits and after going through the impugned Judgment passed by the Trial Court, if it is found that the appellant is in incarceration, the Court can appoint a legal aid counsel or Amicus Curiae to proceed with the trial. In the case on hand, the



sentence imposed on the revision petitioner/accused has been suspended pending disposal of the above appeal and therefore, the Lower Appellate Court, in all fairness, should have gone through the impugned Judgment passed by the Trial Court and disposed of the appeal, on merits. However, the Lower Appellate Court has erroneously dismissed the Criminal Appeal for default.

11. In the result, the Criminal Revision case is allowed and the impugned Judgment dated 18.07.2014, made in C.A.No.22 of 2012, is set aside and the matter is remitted back to the Court of Additional District and Sessions Judge, Pudukkottai, for disposal. It is made clear that the revision petitioner/accused cannot adopt dilatory tactics and shall extend her maximum co-operation for early disposal of the Criminal Appeal and in any event, the Lower Appellate Court is directed to dispose of the Criminal Appeal on or before 06.05.2015.

Sd/-
Assistant Registrar

/True Copy/

Sub- Assistant Registrar(C.S)

To

- 1.The Additional District and Sessions Judge, Pudukkottai.
- 2.The Judicial Magistrate, Pudukkottai District.
3. The Superintendent, Central Prison for women, Trichy.

COPY TO

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(to return the lower Court records immediately)

+1cc to Mr.P.Saravanan, Advocate in SR.No. 14887

+1cc to Mr. D.Ramesh Kumar, Advocate in SR.No. 14491

TS/30.03.2015/3P-7C

ORDER MADE IN
CRL.RC. (MD) No.407 of 2014

DATED - 25.03.2015