

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.11.2016

CORAM

THE HONOURABLE DR. JUSTICE P.DEVADASS

Criminal Revision Case No.1709 of 2004  
and  
Crl.A.No.1314 of 2004

Crl.R.C.No.1709 of 2004

L.Bhaskar

.. Petitioner

vs.

D.Venkatesh

.. Respondent

This Criminal Revision is filed under Sections 397 r/w 407 of the Criminal Procedure Code against the judgment dated 19.6.2003 of the Judicial Magistrate No.IV, Vellore in C.C.No.495 of 1998 convicting the petitioner under Section 138 of the Negotiable Instruments Act and sentencing him to six months S.I. and awarding a compensation of Rs.2 lakhs under Section 357(1)(b) Cr.P.C. and confirmed in C.A.No.110 of 2003 on 20.8.2004 by the learned Additional Sessions Judge, Fast Track Court, Vellore.

Crl.A.No.1314 of 2004

D.Venkatesh

... Appellant

Vs.

L.Bhaskar

... Respondent

This Criminal Appeal is filed under Section 378 of Cr.P.C. against the judgment dated 14.9.2004 passed by the learned Additional Sessions Judge, Fast Track Court, Vellore in C.A.No.111 of 2003 revising the judgment of the learned Judicial Magistrate No.IV, Vellore, who has sentenced the respondent to 6 months S.I. and directed to pay Rs.3,00,000/- towards compensation under Section 357(1)(b) of Cr.P.C. for an offence under Section 138 of Negotiable Instruments Act in C.C.No.496 of 1998.

For petitioner in  
Crl.R.C.No.1709/2004 &  
Respondent in  
Crl.A.No.1314/2004 : Mr.S.Haroon Al.Nasheed

For Respondent in  
Crl.R.C.No.1709/2004 &  
Petitioner in  
Crl.A.No.1314/2004 : Mr.V.Krishnamoorthy

#### JUDGMENT

Since the accused and the complainant are same in the Criminal Appeal and in the Criminal Revision, these matters are going to be disposed of on a similar legal issue, both are heard together and are being disposed of by a common judgment.

2 The complainant alleged that the accused has issued him two cheques with reference to two transactions without keeping sufficient funds in his Bank Account and as he has not paid the amount inspite of statutory notice and on expiry of the time limit, he has filed two complaints under Section 200 Cr.P.C. for an offence under Section 138 of N.I. Act. They are C.C.No.495 and 496 of 1998 on the file of Judicial Magistrate No.IV, Vellore. The accused, defended by engaging learned counsels.

3 After trial, in both the cases, the accused was convicted and sentenced.

4 The accused preferred C.A.No.110 of 2003 as against the judgment in C.C.No.495 of 1998 and he has also preferred C.A.No.111 of 2003 as against the judgment rendered in C.C.No.496 of 1998.

5 The learned Additional Sessions Judge (Fast Track Court), Vellore dismissed C.A.No.110 of 2003 and confirmed the conviction and sentence. However, allowed C.A.No.111 of 2003 and acquitted the accused. That is how, Criminal Revision No.1709 of 2004 has been filed by the accused Baskar and Criminal Appeal No.1314 of 2004 has been filed by the complainant, as against the order of acquittal.

6 It has been contended by the learned counsel for the revision petitioner/accused that the accused has engaged Advocates to defend him, however, the learned appellate Judge has not given opportunity to the learned counsel and not heard the arguments and even he has dispensed with their arguments. Almost the judgment rendered by the appellate Judge is an exparte judgment. Exparte judgment is unknown in Criminal law.

It is an infraction of right of defence given to an accused under Section 303 Cr.P.C. which has been constitutionally guaranteed under Section 22(1) of the Constitution of India. Further, even if there is no lawyer, it is the bounden duty of the Court to provide him legal assistance. It emanates from Article 39(A) of the Constitution of India.

7 In support of his submissions, the learned counsel for the accused cited the following decisions:

- 1 Judgment of the Hon'ble Supreme Court in Crl.A.No.1091 of 2006 dated 11.01.2012 in Mohd.Hussain @ Julfikar Ali vs. The State of Delhi.
- 2 Order of this Court in Crl.O.P.No.21762 of 2013 dated 02.09.2013 in Suresh @ Dhanasekar vs. State.
- 3 Order of this Court in Crl.O.P.No.21676 of 2013 dated 12.9.2013 in Nagaraj vs. State
- 4 Order of this Court in Crl.O.P.No.7142 of 2013 dated 01.10.2013 in S.Yuvaraj vs. State.
- 5 Order of this Court in Crl.O.P.No.2855 of 2016 dated 10.2.2016 in Krishnaiah vs. State

8 On the other hand, the learned counsel appearing for the complainant, submitted that the appellate Judge has considered the evidence on record and rendered the judgment on merit. In such circumstances, the accused cannot complain. He has cited this Court's judgment in Kalaiselvi vs. Sivasubramanian in Crl.R.C.(MD) No.190 of 2016.

9 I have anxiously considered the rival submissions, perused the impugned judgments, materials on record and the decisions cited.

10 In C.A.No.110 of 2003, in the appearance portion of the judgment, the learned appellate Judge recorded as under:

"This Criminal Appeal came before me for final hearing on 18.08.2004, though Thiru V.Varadarajan, Advocate filed vakalat for the appellant and Thiru G.Kalaimani, Advocate, for the respondent. No representation made by both sides and hence argument is dispensed with."

11 The appeal was disposed of on 20.8.2004. it is pertinent to note that Mr.V.Varadarajan, a learned member of the Vellore bar defended the accused/appellant while Thiru G.Kalaimani, a learned member of the bar appeared for the other

side. It is pertinent to note that in C.A.No.111 of 2003, the very same lawyers have appeared for the respective parties before the very same Court.

12 A perusal of the judgments would show that there was no effective representation for the respective parties through their learned counsels. Fair trial is linked with conducting of trial by the trial Courts. When appeal/revisions are filed as against the orders and judgment of the trial Court, it is continuation of the trial Court proceedings. Although, before the trial Court/revisional Court there is no trial, but, there must be 'fair hearing'. In fact concept of fair trial can be interchanged as fair hearing at the appellate Court. Fair hearing would be when there was effective defence for the respective parties. Effective defence also connotes appearance of lawyer for the respective parties.

13 In my considered view, in a Criminal proceedings before a Court less of a lawyer mere presence of a party and hearing him without the assistance of a lawyer is like hearing a deaf and dumb man. Lawyers are light/vision to drive away the darkness. In the absence of them, we (Court) will be searching a missing cat (truth) in darkness.

14 It is also a bounden duty of the trial Court or appellate Court to inform the accused that he is entitled to legal assistance. It is the duty of the Court to engage a defence counsel. It flows from Article 22(1) and 39(A) of the Constitution of India. Right to be heard through a counsel itself has been made a Fundamental Right because it appears in part III of the Constitution of India. This right also has been reiterated in Section 303 and Section 304 Cr.P.C.

15 Now, on a consideration of the above aspects and the decisions cited, I am of the view that these appeals should be re-heard by the appellate Court giving opportunity to both sides to present their arguments through their respective counsels.

16 In view of the foregoing, ordered as under:-

(i) The judgments rendered by the learned Additional Sessions Judge, Fast Track Court, Vellore in C.A.Nos.110 & 111 of 2003 are set aside.

(ii) The said C.A.Nos.111 and 110 of 2003 shall be restored to file.

(iii) The learned principal Sessions Judge, Vellore shall dispose of the Criminal Appeals on merits after hearing both side counsels.



(iv) The learned Principal Sessions Judge, Vellore shall dispose of both the Criminal Appeals within three months from the date of receipt of a copy of this judgment.

17 Accordingly, the Criminal Revision and the Criminal Appeal are disposed of.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp/vaan

To:

1. The Principal Sessions Judge,  
Vellore
- 2 The Additional Sessions Judge,  
(formerly Fast Track Court),  
Vellore.
- 3 The Judicial Magistrate No.IV,  
Vellore.

Copy to:

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

Criminal Revision Case No.1709 of 2004  
and Crl.A.No.1314 of 2004

RJ(CO)  
RS(19/05/2017)

WEB COPY