

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2017

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

Crl.R.C.No.882 of 2017

P.S.Karthikeyan Petitioner

Vs.

M.R.Veluanand Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. to set aside the order dated 12.03.2015 passed by the V Additional District and Sessions Court, Coimbatore in C.A.No.57 of 2014 and against the order dated 15.04.2014 in STC.No.78 of 2009 on the file of the Judicial Magistrate No.III, Coimbatore.

For Petitioner : Mr.S.Arivazhagan

For Respondent : No Appearance

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ORDER

This Revision case has been filed against the order passed by the V Additional District and Sessions Court, Coimbatore made in C.A.No.57 of 2014 dated 12.03.2015.

2. The petitioner is the accused in a proceedings filed by the respondent under Section 138 of Negotiable Instrument Act and the said complaint has been taken on file in STC.No.78 of 2009 on the file of the Judicial Magistrate, No.III, Coimbatore.

3. After trial, the trial Court has convicted the petitioner for the offence under Section 138 of the Negotiable Instrument Act and sentenced him for three months simple imprisonment and also ordered compensation of Rs.5,00,000/- (Rupees Five lakh only).

4. As against the said judgment of the trial Court, the petitioner had preferred an appeal before the first Appellate Court in C.A.No.57 of 2014. The said appeal was disposed by the first Appellate Court through the impugned order, but not on merits but on invoking the default clause as the petitioner, who is the appellant before the first Appellate Court did not appear on the date.

5. The lower Appellate Court has passed the following order:
"Appellant absent today also, no representation today also, hence, appeal is dismissed for default."

6. Assailing the said order of dismissal on the ground of

default, the present revision has been filed.

7. I have heard Mr.S.Arivazhagan, learned counsel appearing for the petitioner.

8. The learned counsel would submit that whatever be the reason, if at all the appellant was not present before the first Appellate Court as per the procedure as contemplated under Code of Criminal Procedure, the appeal should have been disposed on merits as the appeal was filed against conviction.

9. The appeal ought not have been disposed of in the manner which has been adopted by the first Appellate Court by passing a cryptic order to state that there was no representation, hence the appeal was dismissed for default.

10. The learned counsel for the petitioner in support of his contention, has relied upon an order of this Court passed by a learned Judge in **C.R.L.RC(MD) No.409 of 2016 in the matter of Muniyandi Vs State Represented Through Inspector of Police, Central Crime Branch, Madurai**. In the said case also, the accused was convicted under Section 138 of Negotiable Instrument Act and he filed an appeal before the first Appellate Court and the

Appellate Court passed an order without considering the merits of the case but only on default clause. Therefore, considering the said aspect, the learned Judge has held at paragraph 8 which reads as follows:

"It is seen that the learned Judge has dismissed the appeal for default. It means the conviction and sentence are confirmed without a hearing. It is not a merit desposal. A suit can be dismissed for default. But not a criminal appeal. So, the impugned judgment passed by the learned VI Additional Sessions Judge is vitiated."

11. Thereafter, the learned Judge after having set aside the order passed by the first Appellate Court, directed the said Court to take up the appeal and decide the same on merits.

12. Notice had been served in this case to the respondent and based on such service, the name of the respondent with full address has been shown in the cause list today, however no one has chosen to appear before this Court on behalf of the respondent.

13. On consideration of the said submissions made by the

learned counsel appearing for the petitioner and also the judgment relied upon by him as has been extracted above, it is imperative that the first Appellate Court, ought not to have passed the present impugned order. Even if the appellant is absent on the particular day the course of action to be adopted by the first Appellate Court must be to proceed the case and decide the same on merits, since the appellant/petitioner is facing conviction at the hands of the trial Court Judgement as against which the appeal was filed. Without deciding the said issue as to whether, the conviction imposed against the appellant/petitioner was justifiable in the given facts and circumstances of the case as well as the law, such kind of cryptic order dismissing the appeal ought not to have been passed.

14. Therefore, applying the dictum of the learned Judge in the judgement referred to above, I am of the view that the present impugned order also cannot be sustained in the eye of law as the learned Judge has dismissed the appeal not on merits but only on default clause.

15. In the result, the impugned order is set aside, the appeal in C.A.No.57 of 2014 on the file of the first Appellate Court is hereby restored. The petitioner hereby is directed to appear before the first Appellate Court and he should render all necessary co-

operation to the said Court for taking up the matter and to decide the same on merits by engaging a counsel or appearing by himself.

R. SURESH KUMAR, J

AT

16. With these directions, the Criminal Revision Case is allowed.

18.08.2017

Index:yes/no
Internet:yes/no
AT

To

1. The learned V Additional District and Sessions Court, Coimbatore
2. The learned judicial Magistrate No.III, Coimbatore.

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