



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2017

CORAM

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THE HONOURABLE **MR. JUSTICE V. BHARATHIDASAN**

Crl.R.C(MD)No.449 of 2017
and
Crl MP(MD)Nos.4761 & 4762 of 2017

S.Sivasubramanian .. Petitioner/Appellant/Sole Accused

Vs.

T.Senthil .. Respondent/Respondent/Complainant

Criminal Revision Case is filed under section 397 r/w 401 of Cr.P.C against the order of dismissal for non prosecution dated 12.04.2017 passed in C.A.No.46 of 2016 by the Additional District Court, Palani, confirming the Judgment and conviction dated 21.07.2016 passed in C.C.No.13 of 2016 by the Fast Track Court (Magisterial Level), Palani.

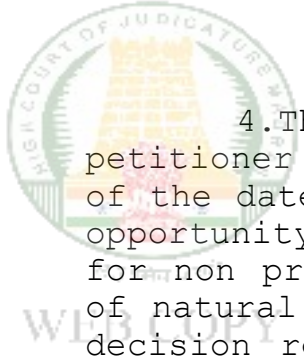
For Petitioner : Mr.T.Lenin Kumar
For Respondent : No appearance

ORDER

This Criminal Revision Case has been preferred against the order of dismissal passed in C.A.No.46 of 2016 by the Additional District Court, Palani, confirming the conviction and sentence passed in C.C.No.13 of 2016 by the Fast Track Court (Magisterial Level), Palani.

2.The respondent herein as complainant has filed a complaint under section 138 r/w 142 of the Negotiable Instruments Act, 1881 on the file of the trial Court, wherein the present revision petitioner has been shown as sole accused. The trial Court after considering the available evidence on record, has found the accused guilty under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to undergo five months simple imprisonment and directed to pay Rs.10,00,000/- as compensation. Against the conviction and sentence passed by the trial Court, C.A.No.46 of 2016 has been preferred an Appeal. The lower appellate Court has dismissed the Appeal for default. Challenging the same, the present Criminal Revision case has been filed.

3.Even though notice has been ordered to the respondent through Court and privately and his name is also printed in the cause list, none appeared for the respondent.



4. The learned counsel for the petitioner submitted that the petitioner did not appear before the Court due to misunderstanding of the date of hearing. The first appellate Court without giving an opportunity of hearing to the petitioner, has dismissed the Appeal for non prosecution, which would amount to violation of principles of natural justice. In support of his contention, he relied upon a decision reported in **1996 (9) SCC 372 (Kishan Singh Vs. State of U.P.,)**, wherein the Hon'ble Apex Court has held that "appeal cannot be dismissed for non prosecution. The appellate Court should examine the appeal and Judgment under challenge and consider the merits of the case before dismissing the appeal summarily".

5. It is a settled principle of law that the appellate Court cannot dismiss the appeal for default. If at all the appellant is not appeared at the time of hearing, the appellate Court should either appoint a legal aid counsel or dispose of the appeal on merits.

Therefore, the order of dismissal passed by the first appellate Court is erroneous and the same liable to be set aside and the matter is liable to be remitted to the file of the first appellate Court.

6. In fine, this Criminal Revision Case is allowed. The dismissal order passed in C.A.No.46 of 2016 by the Additional District Court, Palani is set aside and the matter is remitted to the file of the first appellate Court. The first appellate Court is directed to take up the appeal on file and dispose of the same on merits and in accordance with law. Consequently, CrI MP(MD)Nos.4761 & 4762 of 2017 are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Additional District Judge, Palani
2. The Fast Track Court (Magisterial Level), Palani.

+1cc to Mr.T.LENIN KUMAR Advocate in SR. No.63058

MJ

JS/MR/KKR/SAR.3/13.07.2017/2P-4C

CrI.R.C(MD)No.449 of 2017
03.07.2017