



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2017

CORAM

**THE HON'BLE MR.JUSTICE V.BHARATHIDASAN**

Crl.R.C(MD).No.738 of 2017

and

Crl.M.P.(MD).No.8589 of 2017

B.Poopandi

... Petitioner/Accused

-Vs-

Ramachandran

... Respondent/Complainant

**Prayer :** Criminal Revision Case filed under Section 397 & 401 of the Code of Criminal Procedure, to call for the records and set aside the order dated 03.01.2017 in CA.No.05 of 2016 on the file of the Additional District Court, Fast Track Court, Paramakudi, confirming the judgment and sentence, dated 10.03.2016 made in S.T.C.No.1184 of 2013, on the file of the Judicial Magistrate, Paramakudi.

For Petitioner

: Mr.I.Robert Chandrakumar

For Respondent

: Mr.Ramesh Arumugam for

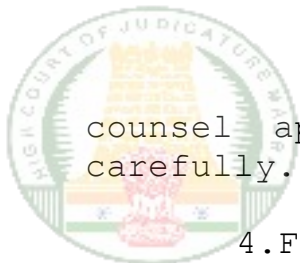
Mr.M.S.Jeyakarathi

### **O R D E R**

The present revision has been filed, against the order dismissing the petitioner's appeal for default.

2.The petitioner is accused in S.T.C.No.1184 of 2013 on the file of the learned Judicial Magistrate, Paramakudi for the offence under Section 138 of Negotiable Instruments Act. Earlier, the trial court convicted the petitioner under Section 138 of the Negotiable Instruments Act and sentenced him to undergo four months simple imprisonment and he was further directed to pay a sum of Rs.3,50,000/- to the complainant as compensation, and in default to undergo one month simple imprisonment. Challenging the above said conviction and sentence, the petitioner filed an appeal in C.A.No. 05 of 2016 on the file of the Additional District Court, Fast Track Court, Paramakudi. The lower appellate court dismissed the appeal for default on the ground that on 03.01.2017, when the case was called, the petitioner and his counsel are absent. Thereafter, the petitioner was arrested and he was remanded to judicial custody. Hence, in order to set aside the order passed by the lower appellate court, dated 03.01.2017, the present criminal revision case has been filed.

<https://hcservices.ecourts.gov.in/hcservices/> I have heard Mr.I.Robert Chandrakumar, learned counsel appearing for the petitioner and Mr.Ramesh Arumugam, learned



counsel appearing for the respondent and perused the records carefully.

4. From the perusal of the order passed by the lower appellate court, the petitioner was absent for one hearing, hence the appeal was dismissed for default. For non appearance of appellant or his counsel, the court cannot dismiss the appeal for default. If at all there is a non-appearance, the court can appoint a legal aid counsel or pass an order on merits, and the court cannot dismiss the appeal on default. Under the said circumstances, I am of the view that the order passed by the lower appellate court is liable to be set aside.

5. In fine, this criminal revision case is allowed and the order passed by the lower appellate court, dated 03.01.2017 is set aside and the lower appellate court is directed to restore the appeal in C.A.No.05 of 2006 on file and dispose of the same, within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

6. At this stage, the learned counsel appearing for the respondent/complainant submitted that even though the appeal was dismissed on 03.01.2017, with much difficulty to execute the warrant, the petitioner was only arrested on 20.08.2017 and the petitioner is purposefully dragging on the matter.

7. In the above circumstances, the petitioner is directed to deposit a sum of Rs.50,000/- (Rupees fifty thousand only) to the credit of S.T.C.No.1184 of 2013, on the file of the Judicial Magistrate, Paramakudi, within a period of six weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Paramakudi
2. The Additional District Court, Fast Track Court, Paramakudi.
3. -Do thro-The Chief Judicial Magistrate, Ramanathapuram.
4. The Superintendent ,  
Central Prison, Madurai.

+1cc to Mr.M.S.JEYAKARTHIK, Advocate, SR.80259

+1cc to Mr.G.PRABHU RAJADURAI, Advocate, SR.79940

Cr1.R.C(MD) No.738 of 2017  
20.09.2017

VS

KK/SKN RSK/SAR 3/21.09.2017/ 2P- 7C