

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1126 of 2012

Rekha Ganesh

..Petitioner/Appellant/Accused

Vs.

S.Shanmuga Velayutham

..Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 09.02.2012 passed in C.C.No.112 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 05.06.2012 passed in C.A.No.47 of 2012 on the file of the III Additional District and Sessions Court, Coimbatore.

For Petitioner : Mr.G.R.Hari
Amicus Curiae

For Respondent : Mr.S.Mahesh

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 09.02.2012 passed in C.C.No.112 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 05.06.2012 passed in C.A.No.47 of 2012 on the file of the III Additional District and Sessions Court, Coimbatore.

2. For the sake of convenience, the petitioner and the respondent will be referred to as accused and complainant, respectively.

3. The complainant initiated a prosecution in S.T.C.No.227 of 2011 before the Judicial Magistrate No.VII, Coimbatore, which, on transfer to the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, was re-numbered as C.C.No.112 of 2011, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused, in which, the trial Court, by judgment and order dated 09.02.2012, convicted the accused of the offence under Section 138 of the NI Act and sentenced her to undergo one

year simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment.

4. Challenging the above conviction and sentence, the accused filed C.A.No.47 of 2012 through Advocate Mr.S.Suresh. When the said appeal came up for hearing before the III Additional District and Sessions Court, Coimbatore, on 05.06.2012, the learned counsel for the accused made an endorsement in the vakalat that he has no further instructions. Therefore, the appellate Court dismissed the appeal on 05.06.2012 by passing the following order:

"2. In view of the endorsement made in the vakalat that "reporting no instructions for appearance". Hence appellant called absent. No representation. Hence appeal is dismissed.

3. In the result, the appeal is dismissed."

5. Challenging the same, the accused filed the present criminal revision through Mr.V.Purushothaman, Mr.R.Vinayaga Vishnu, Mr.S.Ramesh, Mr.M.Babu, Mr.C.Krishnamoorthy, Mr.P.Logidoss and Mr.K.Kannan, Advocates at No.26, Gopalakrishna Iyer Street, Pondy Bazaar, T.Nagar, Chennai - 600 017, under Section 397 r/w 401 Cr.P.C.

6. The accused also filed M.P.No.1 of 2012 in CrI.R.C.No.1126 of 2012 for suspension of sentence and bail, but, for reasons best known to her, it was withdrawn on 29.11.2012. This Court passed the following order in CrI.M.P.No.1 of 2012 on 29.11.2012:

"The learned counsel for the petitioner seeks permission of this Court to withdraw this petition. He has also made an endorsement to that effect.

In view of the above submission and the endorsement made, this petition is dismissed as withdrawn."

7. On 19.11.2019, when this criminal revision came up for final disposal, the learned counsel for the accused reported no instructions. Therefore, this Court passed the following order on 19.11.2019:

"Today when the matter was taken up for hearing, Mr.D.Balamurali (Enrollment No.MS2610 of 2018), learned counsel, who is the junior of Mr.V.Purushothaman, counsel on record for the petitioner reported "No Instructions". Therefore, this Court appoints Mr.G.R.Hari (Enrollment No.MS1416 of 2008), Mobile No.9176624466 as amicus curiae for the revision petitioner.

2. Registry is directed to furnish a free copy of the typed-set of papers to Mr.G.R.Hari. Registry is also directed to print the name of Mr.G.R.Hari and name of the parties in the next listing. Call on 25.11.2019."

8. Heard Mr.G.R.Hari, learned Amicus Curiae for the accused and Mr.S.Mahesh, learned counsel for the respondent.

9. Mr.G.R.Hari, the learned counsel appointed by this Court submitted that this criminal revision has to be allowed on the short ground that the appellate Court ought not to have dismissed the appeal for default, but should have appointed an amicus curiae, heard him and should have passed orders on merits. In support of this submission, he placed strong reliance on the following judgments:

S.No.	Parties	Reported in
1	K.S.Panduranga Vs. State of Karnataka	(2013) 3 SCC 721
2	Christopher Raj Vs. K.Vijayakumar	(2019) 7 SCC 398
3	Keralakumaran Vs. State of Kerala	1995 Cri LJ 2319
4	Kabira Vs. State of Uttar Pradesh	1981 (Supp) SCC 76
5	Suresh Babu Vs. State	2010 (2) MWN (Cr.) 411

10. There appears to be sufficient force in the submission of Mr.G.R.Hari, learned Amicus Curiae. Unfortunately this ground has not been taken by the learned counsel for the accused in the memorandum of grounds in this criminal revision.

11. As a result, this criminal revision is allowed by setting aside the judgment and order dated 05.06.2012 passed in C.A.No.47 of 2012 on the file of the III Additional District and Sessions Court, Coimbatore and the matter is remanded back to the appellate Court by passing the following directions:

(i) The appellate Court shall dispose of the case in C.A.No.47 of 2012 on merits.

(ii) The accused and the complainant shall appear before the appellate Court on 02.03.2020 at 10.30 a.m.

(iii) If the accused does not appear on 02.03.2020, the appellate Court shall appoint an amicus curiae and decide the case on merits.

(iv) The Registry of this Court shall return the original records to the appellate Court immediately.

(v) This Court places on record its appreciation to Mr.G.R.Hari for the assistance rendered by him. The Tamil Nadu State Legal Services Authority, Chennai, shall pay a sum of Rs.5,000/- as remuneration to Mr.G.R.Hari (Enrollment No.MS1416 of 2008).

Sd/-

Assistant Registrar (C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
(Fast Track Court No.II),
Coimbatore.
2. The III Additional District and Sessions Judge,
Coimbatore.
3. The Member Secretary,
Tamil Nadu State Legal Services Authority,
North Fort Road, High Court Campus,
Chennai - 600 104.
4. The Deputy Registrar(Crl.Side)
Madras High Court,
Chennai - 104.

AKM/27.02.2020/4P-5C/

Crl.R.C.No.1126 of 2012