

THE HONOURABLE JUSTICE G. SRI DEVI
CRIMINAL REVISION CASE No.160 of 2020

ORDER:

This revision is filed under Section 397 read with Section 401 of Cr.P.C., against the order of dismissal for default dated 17.01.2020 passed in CrI.A.No.892 of 2019 by the learned III Additional Metropolitan Sessions Judge, Hyderabad.

2. After due trial, the petitioners/A1 and A2 were found guilty of the offence under Section 138 of Negotiable Instruments Act, 1881 and A2 was convicted and sentenced to undergo simple imprisonment for a period of three months and to pay a fine of Rs.1,55,000/-, in default he shall undergo imprisonment for one month vide judgment dated 13.09.2019 in C.C.No.17 of 2019 on the file of the XXI Special Magistrate, Hyderabad. Aggrieved by the same, the petitioners filed CrI.A.No.892 of 2019 on the file of III Additional Metropolitan Sessions Judge, Hyderabad, along with a petition for suspension of sentence. The appellate Court, while suspending the sentence of imprisonment, imposed a condition on the 2nd petitioner/A2 to deposit 20% of the compensation before the trial Court. However, as the 2nd petitioner/A2 was called absent on 17.01.2020 and there was no representation on his behalf and for non-compliance of the conditional order, the appeal was dismissed for default. Challenging the same, the present revision is filed.

3. Heard learned counsel for the petitioners and perused the order impugned.

4. Learned counsel for the petitioners submits that dismissal of appeal for default is illegal, arbitrary and unsustainable. He further submits that as the appeal is filed against conviction, the appellate Court failed to dispose of the matter on merits and therefore, the order of dismissal passed by the learned Sessions Judge is liable to be set aside.

5. The appellate Court observed that after revoking the suspension of sentence, the 2nd petitioner/A2 has not deposited 20% of the compensation and he was called absent on 17.01.2020 and there was no representation on his behalf and hence, dismissed the appeal for default.

6. A perusal of the order impugned, it is apparent that the appeal was not disposed of on merits, but it was dismissed for default, which is not permissible under law. Therefore, the order impugned is liable to be set aside on this score only and accordingly, the same is set aside. However, the 2nd petitioner/A2 is directed to appear before the appellate Court on 17.02.2020 positively, and he shall deposit 20% of the compensation as directed by the appellate Court in CrI.M.P.No.719 of 2019 in CrI.A.No.892 of 2019 on the same day. On such deposit, the learned Sessions Judge shall proceed with the appeal in accordance with law.

6. With the aforesaid directions, the Criminal Revision Case is disposed of.

7. Miscellaneous applications, if any pending in this revision, shall stand closed.

G. SRI DEVI, J

7th February, 2020

sj

