



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

CORAM

THE HON'BLE MS. JUSTICE R.N.MANJULA

Cr1.RC.No.689 of 2015

and

M.P. Nos.1 & 2 of 2015

B.Bala Murali

... Petitioner/Accused

Vs.

B.Rangarajan

... Respondent/Complainant

Prayer:- This Criminal Revision Petition is filed under Section 397 and 401 of Cr.P.C., to call for the records of the case in C.A. No.20 of 2013 on the file of IV Additional City Civil Judge at Chennai in CC. No.5002/2011, Metropolitan Magistrate, FTC I, Egmore and set aside the order of dismissal of the appeal dated 19.01.2015 and restore the same.

For Petitioner : Mr.K.Sudhakar

For Respondent : No Appearance

ORDER

This Criminal Revision Petition has been preferred challenging the judgement of the learned IV Additional Judge, City Civil Court, Chennai made in CA. No.20 of 2013 dated 19.01.2015.

2. The appellant is the accused and was facing trial in CC. No.5003 of 2011 before the Metropolitan Magistrate, Fast Track Court I, Egmore, Chennai-8 for the offence under Section 138 of the Negotiable Instruments Act, 1881. The learned Magistrate has found the accused guilty and sentenced him to undergo simple imprisonment of six months and to pay the cheque amount of Rs.8,50,000/- as compensation within one month from the date of that order .

3. Aggrieved over the aforesaid order, he has preferred an



appeal before the IV Additional Judge, City Civil Court, Chennai/ first appellate Court in CA. No.20 of 2013. Since no representation was made for the accused before the first appellate Court, the appeal was dismissed for default. Now the petitioner/accused has challenged the said judgement by preferring this Revision Petition.

4. When the matter is called today, learned counsel for the respondent is absent. Learned counsel for the petitioner submitted that even in appeal, there was no appearance on behalf of the respondent. But he submitted that the appeal has to be disposed on merits and it cannot be dismissed for default, as it would prejudice the merits of the matter.

5. He relied on the judgement of the Hon'ble Supreme Court reported in (1994) 4 SCC 664 (Parasuram Patel and Another v. State of Orissa) in support of his above contention. The same position was once again confirmed by the Full bench decision of the Hon'ble Supreme Court made in Bani Singh and Others V. State of U.P reported in (AIR 1996 SC 2439).

6. In Bani Singh (Supra), the Hon'ble Supreme Court has held as under:

"The law clearly expects the Appellate Court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial Court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial Court are consistent with the material on record. The law, therefore does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record".
It has been further held that:-

"The law does not enjoin that the Court shall adjourn the case if both the appellant and his lawyer are absent. If the court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the judgment of the trial Court. We would, however, hasten to add that if the accused is in jail and cannot, on his own, come to Court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the accused-appellant if his lawyer is not present. If the lawyer is absent, and the Court deems it



appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so"

7. The provisions of Sections 384, 385 and 386 of the Code of Criminal Procedure, 1898 have also been referred and it is held that once an appeal is admitted, it has to be disposed only on merits or other words if at all the appeal is to be dismissed summarily that can be done at the stage of admission itself and not subsequently.

8. The relevant provision under Section 385 Cr.PC. reads as under:

'385. Procedure for hearing appeals not dismissed summarily.

(1) If the Appellate Court does not dismiss the appeal summarily, it shall cause notice of the time and place at which such appeal will be heard to be given-

(i) To the appellant or his pleader;

(ii) To such officer as the State Government may appoint in this behalf,

(iii) If the appeal is from a judgment of conviction in a case instituted upon complaint to the complainant;

(iv) If the appeal is under section 377 or section 378, to the accused, and shall furnish such officer, complainant and accused with a copy of the grounds of appeal.

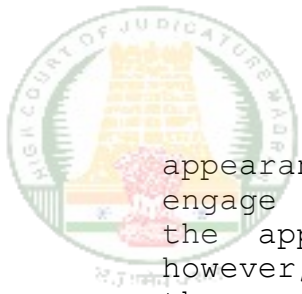
(2) The Appellate Court shall then send for the record or the case if such record is not already available in that court and hear the parties:

Provided that if the appeal is only as to the extent or the legality of the sentence, the court may dispose of the appeal without sending for the record.

(3) Where the only ground for appeal from a conviction is the alleged severity of the sentence, the appellant shall not except with the leave of the court urge or be heard in support of any other, ground.'

9. As per the provisions of Section 385 Cr.PC, a duty is bestowed upon the appellate Court to call for the records from the lower Court, hear the parties and then dispose of the same. The difficulty arises when there is a failure on the part of the appellant to represent the matter. Once the appeal is admitted and the records have been called for from the Court, the appellate Court is in a position to appreciate the merits of the matter on the basis of the materials available on record, even if the appellant fails to make his appearance.

10. If the accused is in jail and the counsel fails to make



appearance in the appeal filed by him, then the Court needs to engage a counsel on its own through Legal Aid and then dispose the appeal after hearing his counsel so appointed. But, however, it is the discretion of the Court either or not to get the assistance of such amicus curiae. It just depends on the complexity of the matter or the issue involved and only if the assistance of the legal counsel is inevitable.

11. The dictum of the Hon'ble Supreme Court has been followed by this Court in humpty number of cases. In the present case on hand, the learned first appellate Judge has dismissed the appeal for default and did not advert into the merits or grounds of appeal. Since such a course of disposal is held to be not legal, it is inevitable to remand the matter back to the first appellate Court in order to dispose the case afresh.

12. In the result, this Criminal Revision Petition is allowed and the Judgement of IV Additional City Civil Judge at Chennai in C.A. No.20 of 2013 dated 19.01.2015 is set aside and Connected Miscellaneous Petitions are closed.

13. The matter is remitted back to the first appellate Court for fresh disposal in accordance with law, as expeditiously as possible. The petitioner/accused is directed to appear before the IV Additional Judge, City Civil Court, Chennai on 07.12.2021 without expecting any further notice in this regard. If the respondent is not represented before the first appellate Court, the first appellate Court is directed to issue a fresh notice to the respondent/complainant and the learned counsel who has represented him in the appeal.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

rkp

To

1. The IV Additional City Civil Judge,
Chennai.



2. The Metropolitan Magistrate,
Fast Track Court I,
Egmore, Chennai-8.

WEB COPY

3. Do-Through,
The Chief Metropolitan Magistrate,
Chennai.

+lcc to M/s.K.Sudhakar, Advocate, S.R.No.59731

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and
M.P. Nos.1 & 2 of 2015

KSM(CO)
SU(02/12/2021)