



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.389 of 2021 and
CrI.M.P.No.6295 of 2021

Balaraman

...Petitioner

-Vs-

1.Balasubramaniam

2.The Public Prosecutor,
District Court, Coimbatore.

...Respondents

Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the conviction imposed in the judgment dated 27.08.2019 made in C.A.No.63 of 2019 on the file of the learned I Additional District and Sessions Judge, Coimbatore, by reversing the judgment of acquittal dated 23.10.2018 made in C.C.No.551 of 2017 on the file of the learned Judicial Magistrate, Sulur by allowing this criminal revision case.

For Petitioner : Mr.N.Ponraj

Respondents : S.N.Arunkumar for R1
Mr.S.Sugendran,
Govt. Advocate (CrI.Side) for R2

O R D E R

The petitioner is an accused and respondent is complainant. The respondent filed a private complaint under Section 200 Cr.P.C. for the offence under Section 138 of Negotiable Instruments Act (in short "NI Act") before the learned Judicial Magistrate, Sulur, which was taken on file in C.C.No.551 of 2017. The learned Judicial Magistrate, after due enquiry, dismissed the complaint by order dated 23.10.2018 and acquitted the petitioner/accused. Aggrieved against which, the respondent/complainant filed an appeal before learned Principal District and Sessions Judge, Coimbatore, which was taken on file in C.A.No.63 of 2019 and made over the same to the learned I Additional District and Sessions Judge, Coimbatore. The learned



I Additional District and Sessions Judge, by judgment dated 27.08.2019, allowed the appeal by reversing the judgment of acquittal and convicted the petitioner/accused for the offence under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for a period of one year and also directed to pay a sum of Rs.14,35,000/- to the respondent/complainant as compensation, against which, present revision has been filed by the accused.

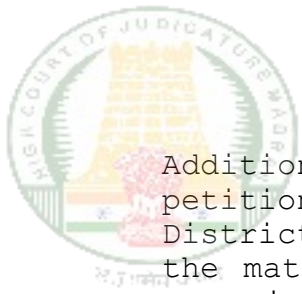
2 According to learned counsel appearing for the petitioner/accused, the learned Sessions Judge failed to give opportunity to the petitioner to defend the case, especially when he intend to reverse the judgment of acquittal and convict him. In the impugned judgment dated 27.08.2019, the learned Sessions Judge has clearly stated that no counsel was appeared on behalf of the petitioner/accused and heard the counsel for the first respondent/complainant, which is against the principles of natural justice.

3 The learned counsel appearing for the first respondent vehemently contended that the petitioner/accused despite giving sufficient opportunities, evaded arguments and therefore the learned Sessions Judge as no other option, heard the first respondent and also re-appreciated entire evidence and passed the judgment convicting the petitioner. Now the petitioner, in order to evade payment, has filed the present revision before this Court, which is liable to be dismissed.

4 Heard the learned counsel appearing on either side and perused the materials available on record.

5 As pointed out by the learned counsel appearing for the petitioner/accused, the lower appellate Court, should have given sufficient opportunities to the accused to defend the case especially, when he intend to reverse the judgment of acquittal. In the present case, if at all the petitioner/accused has not appeared before the Court and argued the matter, the I Additional District and Sessions Judge, should have at least appointed a Legal Aid Counsel to defend the case on behalf of the petitioner/accused. The learned Sessions Judge failed to exercise his power in a right manner and passed an ex-parte judgment convicting the petitioner/accused and it is to be noted that ex-parte order is unknown to criminal case.

6 Hence, the judgment of conviction and sentence passed by the learned I Additional District and Sessions Judge, Coimbatore, in C.A.No.63 of 2019 dated 27.08.2019 is hereby set aside and in order to give opportunity to the petitioner/accused to defend the case, the matter is remanded back to the I



Additional District and Sessions Judge, Coimbatore. The petitioner is directed to appear before the learned I Additional District and Sessions Judge, Coimbatore, on 03.08.2021 and argue the matter either physically or through video conference, which ever is convenient to the Court as well as the counsel. It is made clear that on 03.08.2021 while appearing before the Sessions Judge, the petitioner or his counsel should not seek any adjournment and if he will not argue the matter on the same day, the learned I Additional District and Sessions Judge, Coimbatore, is directed to cancel the vakalat filed on behalf of the petitioner and appoint a Legal Aid Counsel and after hearing his submissions, the appeal may be disposed of in accordance with law on or before 17.08.2021. In case, Legal Aid Counsel is appointed and heard his arguments, he is entitled to get remuneration from the Legal Services Authority and the I Additional District and Sessions Judge is further directed to recover the said remuneration from the petitioner/accused and remit back the same to the Legal Services Authority.

7 With above observations and directions, this criminal revision case is allowed. Consequently connected miscellaneous petition is closed. The Superintendent of Jail, Central Prison, Coimbatore, is directed to release the petitioner/accused forthwith, if he is not required in any other case.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

cgi

To

- 1.The I Additional District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate, Sulur.
- 3.The Public Prosecutor, High Court of Madras.
- 4.The Superintendent of Jail, Central Prison,
Coimbatore.
5. The Section Officer,
Criminal Section, High Court, Madras.



+1cc to Mr.N.Ponraj, Advocate SR.No.32854

+1cc to Mr.MN.Balakrishnan, Advocate SR.No.33253

WEB COPY

Crl.R.C.No.389 of 2021 and
Crl.M.P.No.6295 of 2021

AJB (CO)
GMY (14/07/2021)