



WEB COPY



Crl.R.C(MD)No.330 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.01.2025

Pronounced on : 23.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.330 of 2024

S.Jeyaeswari

... Petitioner

Vs.

K.Kalaivani

... Respondent

PRAYER : This Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the order of conviction in Crl.A.No.94 of 2022, dated 27.02.2024 under Section 372(3) of Cr.P.C., on the file of the Additional District Judge (FTC), Theni in S.T.C.No.40 of 2021, dated 11.10.2022 under Section 255(2) of Cr.P.C., confirming the order of the Judicial Magistrate Court (FTC) at Uthamapalayam, Theni District and set aside the same and allow this Criminal Revision Petition.

For Petitioner : Mr.R.Anand
for Mr.S.Madhan Kumar

For Respondent : Mr.C.Mayil Vahana Rajendran



ORDER

WEB COPY This Criminal Revision Case is filed to set aside the judgment, dated 27.02.2024 in Crl.A.No.94 of 2022 on the file of the learned Additional District Judge (FTC), Theni and allow the Criminal Revision Case.

2.The brief facts of the case:

The respondent filed a case in S.T.C.No.40 of 2021 on the file of the Judicial Magistrate Court (FTC), Uthamapalayam against the revision petitioner under Sections 138 and 142 of the Negotiable Instruments Act on the allegation of dishonor of the cheque No.331083, dated 23.08.2021 for Rs.5,00,000/-, which was issued by the revision petitioner towards loan obtained by him from the respondent. The revision petitioner contested the case. Both sides adduced oral and documentary evidences. On the respondent's side, P.W.1 was examined and Ex.P.1 to Ex.P.5 were marked. On the revision petitioner's side, D.W.1 to D.W.5 were examined and Ex.D.1 to Ex.D.6 were marked.

3. After hearing both sides and after considering the evidences, the learned Judicial Magistrate (FTC), Uthamapalayam passed the judgment



dated 11.10.2022 convicting the revision petitioner U/s. 138 of the Negotiable Instruments Act and awarded sentence of six months simple imprisonment and directed to pay compensation of cheque amount Rs.5,00,000/- U/s.357 (3) of Cr.P.C. to the respondent.

4. Challenging the judgment of the trial Court, the revision petitioner has preferred the appeal in Crl.A.No.94 of 2022 before the Additional District Court (FTC), Theni. The Appellate Court has dismissed the criminal appeal on the ground that the appellant was absent and there was no representation on her side. Being aggrieved by the judgment of dismissal for default passed by the Appellate Court, the revision petitioner has moved this Court by preferring the present criminal revision case.

5. Heard the learned counsel appearing for the revision petitioner and the learned counsel for the respondent. Perused the records in this Criminal Revision Case.

6. The learned counsel appearing for the revision petitioner has submitted that the revision petitioner's husband namely Suvaneshbairavan got loan from one Srinithya and Muthukumar and



issued three cheques including the cheque No.331083 in question to them. The revision petitioner's husband settled the loan, but the said persons denied to return the cheque, hence, he lodged a police complaint and the same was challenged in Crl.O.P.(MD)Nos.2530 and 3416 of 2022 before this Court. Pending these cases, the respondent filed the cheque case by misusing the cheque in question. The revision petitioner let oral and documentary evidence. But, the Appellate Court simply dismissed the appeal as the appellant was absent and also there was no representation on her side. The Appellate Court cannot pass such order of dismissal, without on merits. The appellate Court ought to have adjudicated the appeal on merits by perusing the records and judgment of the trial Court, but the same was not done. The Appellate Court has failed to appoint a lawyer, who is practicing on the criminal side as Amicus Curiae and decide the case after hearing both sides. Therefore, the judgment of the Appellate Court has to be set aside and the matter may be remanded back for fresh consideration. The learned counsel has relied on the following citations:

- "1) (2013) 3 Supreme Court Cases 721
(K.S.Panduranga /v/ State of Karnataka)***
- 2) Order dated 08.07.2020 passed in
Crl.Appeal No.474 of 2020 by the Hon'ble Supreme
Court.***



***3) Order dated 04.10.2024 passed by this Court
in Crl.R.C.(MD)No.519 of 2024."***

WEB COPY

7. The learned counsel for the respondent has objected the criminal revision case. He would further submit that the Appellate Court has given several opportunities for hearing to the revision petitioner, but she has not turned up for argument. He would further argue that the reason for non appearance of the revision petitioner and her counsel before the Appellate Court was not justified even in the present memorandum of revision. The revision petitioner has filed this criminal revision in order to drag on the proceedings to evade payment of compensation as directed by the trial Court. Therefore, the criminal revision case may be dismissed.

8. On hearing both side rival arguments and on perusal of records, it is clear that the respondent has filed the main case under Sections 138 and 142 of the Negotiable Instruments Act against the revision petitioner alleging that the cheque for Rs.5,00,000/- issued by the petitioner was dishonoured and the same was taken on file as S.T.C.No.40 of 2021 by the learned Judicial Magistrate (FTC), Uthamapalayam. The trial Court found the revision petitioner guilty U/s.138 of the Negotiable



Instruments Act and awarded sentence as stated supra. The revision petitioner has preferred the Criminal Appeal in Crl.A.No.94 of 2022 before the Additional District Court (FTC), Theni. On 27.02.2024, the Appellate Court has passed the order as follows:

“Appellant called absent. No representation. Respondent side presented. Again called and appellant called absent even at 06.35 p.m on day. This appeal is dismissed summarily since conditional order not complied.”

9. The citations relied on by the revision petitioner are perused. It is a settled principle in catena cases that an appeal against the order of conviction cannot be dismissed in default and must be decided on merits even if the appellant is absent. The Hon'ble Supreme Court has also reiterated the same in Crl.Appeal No.474 of 2020. This Court has also emphasized the said principle of law while passing an order in **Crl.R.C(MD)No.519 of 2024, dated 04.10.2024** following the settled decision of Full Bench of the Hon'ble Supreme Court held in **Bani Singh & Ors. /vs/ State of U.P. (AIR 1996 SC 2430)**. In the decision of **Three Judge Bench of the Hon'ble Supreme Court in Bani Sing and others /v/ State of Uttar Pradesh (AIR 1996 SC 2439)**, wherein it is held as follows:



WEB COPY



CrI.R.C(MD)No.330 of 2024

“...The plain language of section 385 makes it clear that if the Appellate court does not consider the appeal fit for summary dismissal, it ‘must’ call for the record and section 386 mandates that after the record is received, the appellate court may dispose of the appeal after hearing the accused or his counsel. Therefore, the plain language of sections 385, 386 does not contemplate dismissal of the appeal for non-prosecution simpliciter. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly expects that 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 satisfy 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.”

“.....The law does not enjoin that the Court shall adjourn the case if both the appellant and his lawyer 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 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.”



10. In view of the above decision, it is clearly settled that if the appellant or his counsel is absent, the Appellate Court can dispose of the appeal on merits after perusing the records and judgment of the trial Court. In this case, the respondent side has also admitted that the appeal is dismissed for default, but only contention is that the revision petitioner dragging the proceedings in order to evade payment of compensation.

11. Considering all these facts and circumstances of this case, and also in view of the settled proposition of law, the impugned judgement of the dismissal of appeal for default passed by the Appellate Court is not valid one and the same is liable to be set aside and the matter is to be remanded back for fresh disposal on merits in accordance with law. At the same time, considering the year of original filing of the case, there must be some direction for disposal.

12. Accordingly, this Criminal Revision Cases is allowed. The judgment, dated 27.02.2024 passed in Crl.A.No.94 of 2022 on the file of the learned Additional District Judge (FTC), Theni, is set aside and the Criminal Appeal is remanded back to the Appellate Court/Additional District Court (FTC), Theni for fresh disposal on merits in accordance with law. The learned Additional District Judge (FTC),



Crl.R.C(MD)No.330 of 2024

Theni is directed to dispose of the Criminal Appeal on merits within a period of three months from the date of receipt of a copy of this order.

23.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Additional District Judge (FTC),
Theni.
- 2.The Judicial Magistrate Court (FTC) at Uthamapalayam,
Theni District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.R.C(MD)No.330 of 2024

P.VADAMALAI, J.

VSD

**Pre - Delivery Order made in
Crl.R.C(MD)No.330 of 2024**

23.01.2025