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Crl.R.C(MD)Nos.1262 and 1264 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.12.2024

Pronounced on : 04.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

**Crl.R.C(MD)Nos.1262 and 1264 of 2024
and
Crl.M.P(MD)Nos.12937, 12939, 12977 and 12978 of 2024**

1. Murugan

... Petitioner in
Crl.R.C(MD)No.1262 of 2024

2. Mathan

... Petitioner in
Crl.R.C(MD)No.1264 of 2024

Vs.

Muthaiah

... Respondent in both Crl.RCs

PRAYER in Crl.R.C(MD)No.1262 of 2024: This Criminal Revision Case has been filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the judgment passed in Crl.A.No.28 of 2020, dated 29.03.2022 on the file of the I Additional District and Sessions Court, Tirunelveli, confirming the judgment passed in C.C.No.136 of 2014, dated 24.04.2019 on the file of the Judicial Magistrate, Valliyoor, by allowing this Criminal Revision Petition.



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PRAYER in Crl.R.C(MD)No.1264 of 2024: This Criminal Revision Case has been filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the judgment passed in Crl.A.No.27 of 2020, dated 29.03.2022 on the file of the I Additional District and Sessions Court, Tirunelveli, confirming the judgment passed in C.C.No.137 of 2014, dated 24.04.2019 on the file of the Judicial Magistrate, Valliyoor, by allowing this Criminal Revision Petition.

For Petitioner : Mr.P.P.Alwin Balan in both Crl.RCs

For Respondent : Mr.R.R.Kannan in both Crl.RCs

COMMON ORDER

These Criminal Revision Cases are filed to set aside the judgment, dated 29.03.2022 in Crl.A.Nos.28 and 27 of 2020 on the file of the learned I Additional District and Sessions Court, Tirunelveli, confirming the judgment, dated 24.04.2019 passed in C.C.Nos.136 and 137 of 2014 on the file of the learned Judicial Magistrate, Valliyoor.

2. The brief facts of the case:

The respondent filed the cases in C.C.Nos.136 and 137 of 2014 on the file of the learned Judicial Magistrate, Valliyoor against the revision petitioners U/s.200 of Cr.P.C. r/w Section 138 of the Negotiable



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Instruments Act on the allegation of dishonor of the cheques for Rs.14,00,000/- and Rs.4,00,000/- issued by the respective revision petitioners. The revision petitioners have contested the cases. Both sides adduced oral and documentary evidences. After hearing both sides and after considering the evidences, the learned Judicial Magistrate, Valliyoor passed the judgment, dated 24.04.2019, convicting the revision petitioners U/s.138 of the Negotiable Instruments Act and sentenced them to undergo imprisonment for a period of one year and directed to pay the cheque amounts Rs.14,00,000/- (Rupees Fourteen lakhs only) and Rs.4,00,000/- (Rupees Four lakhs only) U/s.357 of Cr.P.C. to the respondent. Challenging the judgment, the respective revision petitioners preferred the appeal in Crl.A.Nos.28 and 27 of 2020 before the I Additional District and Sessions Judge, Tirunelveli. The first Appellate Court has dismissed both the Criminal Appeals for default on the ground that “No representation, batta not paid”.

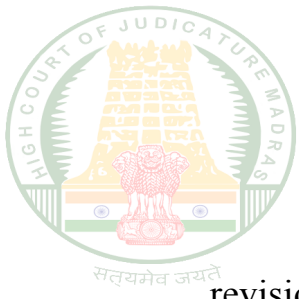
3. Being aggrieved by the judgment of dismissal for default passed by the I Appellate Court, the revision petitioners have preferred these respective Criminal Revision Cases.



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4. Heard the learned counsel appearing for the revision petitioners and learned counsel for the respondent. Perused the records in this Criminal Revision Cases.

5. The learned counsel appearing for the revision petitioners has submitted that the revision petitioners are father and son, who have preferred the Criminal Appeals against the judgment of conviction and sentence passed by the trial Court. The Appellate Court has dismissed both Criminal Appeals for default without considering the merits of the case. The Appellate Court cannot pass an order of dismissal for default. The Appellate Court ought to have adjudicated the appeal on merits perusing the records and judgment of the trial Court, but the same has not been 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. Therefore, the judgment of the Appellate Court has to be set aside and the matter may be remanded back for fresh consideration by relying on the settled principle of the Hon'ble Supreme Court in the case of **Bani Singh and Others /v/ State of U.P.** reported in **AIR 1996 SC 2439** and the decision of the Principal Seat of this Court reported in **2020 (1) MWN (Cr.) DCC 26 (Mad.) (A.Subash vs. J.Aranganathan).**



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6. The learned counsel for the respondent has objected the criminal revision cases. He would further submit that both the revision petitioners have admitted the issuance of cheques and also their signatures. The cheque case was filed in the year 2014 and the trial Court passed the judgment in the year 2019 and the petitioners have filed these criminal revisions with delay petitions to drag on the proceedings in order to evade payment of the cheque amount of Rs.18,00,000/- (Rupees Eighteen lakhs only). So, the Criminal Revision Cases may be dismissed.

7. On hearing both side rival arguments and on perusal of records, it is clear that the respondent has filed private complaints U/s.200 of Cr.P.C. r/w 138 of the Negotiable Instruments Act against the petitioners alleging that the cheques to a total amount of Rs.18,00,000/- issued by the petitioners were dishonoured and the same were taken on cognizance as C.C.Nos.136 and 137 of 2014 by the learned Judicial Magistrate, Valliyoor. In those cases, the petitioners were found guilty and awarded sentence by the learned Judicial Magistrate, Valliyoor as stated supra. The petitioners have preferred the Criminal Appeals in Crl.A.Nos.28 of 2020 and 27 of 2020 before the I Additional District and Sessions Court, Tirunelveli, however, both the appeals were dismissed for default as there was no representation, batta not paid on the



petitioners' side. Now, the petitioners have moved this Court to set aside the dismissal of appeal for default.

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8. The citation reported in **2020 (1) MWN (Cr.) DCC 26 (Mad.)** relied on by the petitioners' side perused. Upon perusal, the learned single Judge of this Court has clearly held that if the appellant or his counsel is absent, the Appellate Court cannot dismiss the appeal for default or for non-prosecution and the appeal should be disposed of on merits after perusing the records and judgment of the trial Court. In that case, the decision of the **Three Judge Bench of the Hon'ble Supreme Court in Bani Sing and Others /v/ State of Uttar Pradesh (AIR 1996 SC 2439)** has been referred wherein it is held as follows:

“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.



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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."

It has been further held in paragraph Nos.17 and 18 as follows:-

"17. The law culled out from the above discussion is that the High Court or the Appellate Court, cannot dismiss the Appeal for default or for non-prosecution, without examining the case on merits. Though the Court is not bound to adjourn the matter, 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 without appointing any learned Counsel as Amicus Curiae. If the Accused is in jail, it would be proper for the Appellate Court, to adjourn the case and fix the date for facilitating the appearance of the



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Accused and if his lawyer is not present and if the lawyer is absent, the Appellate Court should deem it appropriate to appoint a Lawyer for the appellant and nothing in law prevents and the Court from doing so.

18. In the present case, it is seen that the Appeal has not been disposed of by the Appellate Court on merits and it has been dismissed for default. In view of the prepositions of law discussed above this Court finds that the judgment of the Appellate Court is erroneous and illegal and thereby the same is liable to be set-aside."

9. In view of the above decision of this Court in the judgment reported in **2020 (1) MWN (Cr.) DCC 26 (Mad.)** in the case of **“A.Subash /v/ J.Aranganathan”** and in view of the settled proposition of law, the impugned judgment of dismissal of the 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.

10. In the result, these Criminal Revision Cases in Crl.R.C.(MD) Nos.1262 and 1264 of 2024 are allowed. The judgments,



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dated 29.03.2022 passed in Crl.A.Nos.28 and 27 of 2020 on the file of the learned I Additional District and Sessions Judge, Tirunelveli, are set aside and the Criminal Appeals are remanded back to the Appellate Court/I Additional District and Sessions Court, Tirunelveli, for fresh disposal on merits in accordance with law. The learned I Additional District and Sessions Judge, Tirunelveli, is directed to dispose of both the appeals on merits within a period of four months from the date of receipt of copy of this order. Consequently, the connected Miscellaneous Petitions are closed.

04.02.2025

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

To

1. The I Additional District and Sessions Court,
Tirunelveli.
2. The Judicial Magistrate,
Valliyoar.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Pre - Delivery Orders made in
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