



Crl.R.C.(MD)No.824 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2025

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.R.C.(MD)No.824 of 2024

S.Karthi Selvaraj

... Petitioner/Complainant

Vs.

N.Pitchaimani

... Respondent/Accused

PRAYER : Criminal Revision Case filed under Section 397 & 401 of Cr.P.C, to call for the records pertaining to the order passed by the learned District Munsif cum Judicial Magistrate Court, Aravakurichi, Karur in S.T.C.No.22 of 2021 dated 05.12.2023 dismissing the case for non-appearance of the complainant for the offences under Sections 138 and 142 of Negotiable Instruments Act, 1881 and set aside the same.

For Petitioner : Mr.V.Nagarajan

For Respondent : No Appearance

ORDER

Challenging the order passed by the learned District Munsif cum Judicial Magistrate Court, Aravakurichi, Karur in S.T.C.No.22 of 2021 dated 05.12.2023, this criminal revision case is filed.



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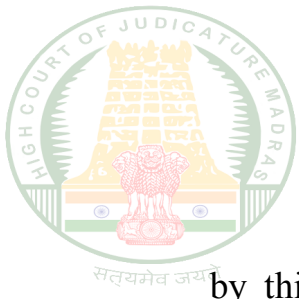
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2. The petitioner herein is the complainant in the case before the learned Trial Court. The complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act before the learned Judicial Magistrate came to be dismissed recording the absence of the complainant before the learned Trial Court and there was no representation on the side of the complainant, despite sufficient time granted and hence, the case was dismissed for non prosecution.

3. The learned counsel for the petitioner submitted that he was unable to appear before the Trial Court because of his illness.

4. Despite notice being issued and the name being printed in the cause-list, there is no representation on the side of the respondent.

5. It is settled proposition of law that the criminal appeal cannot be dismissed for non prosecution and in the absence of counsel to argue the appeal, the appellate Court is duty bound to engage an amicus curiae or legal aid counsel to argue the appeal on behalf of the appellant. It is held



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by this Court in Crl.R.C(MD)No.8 of 2025, dated 07.03.2025. The relevant portion of the same is extracted as follows:

8.At this juncture, it is necessary to refer the judgment of this Court in a similar case in P.Sethu Vs. R.Selvakumaran passed in Crl.RC(MD)No.519 of 2024, dated 04.10.2024, wherein this Court has observed as follows :

“5. The learned Counsel for the petitioner would rely on the decision of the Hon'ble Supreme Court in the case of K.Muruganandam and Others Vs. State represented by the Deputy Superintendent of Police and another in Crl.A.No.809 of 2021, dated 12.08.2021, wherein also the Criminal Appeal was dismissed for non-prosecution and the Hon'ble Apex Court has observed that it is well settled if the accused does not appear though Counsel appointed by him or her, the Court is obliged to proceed with the hearing of the case only after appointing an amicus curiae, but cannot dismiss the appeal merely because of non-representation or default of the Advocate for the accused and on that basis has set aside the impugned judgment and relegate the parties before the High Court for hearing the appeal afresh on its own merits and in accordance with law.

6. At this juncture, it is necessary to refer a judgment of the Full Bench of the Hon'ble Supreme Court in Bani Singh & Ors vs State Of U.P, reported in AIR 1996 SC 2439 and the relevant passages are extracted hereunder:

“We have carefully considered the view expressed in the said two decisions of this Court and, we may state that the view taken in Shyam Deo's case appears to be sound except for a minor clarification which we consider necessary to mention. 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'



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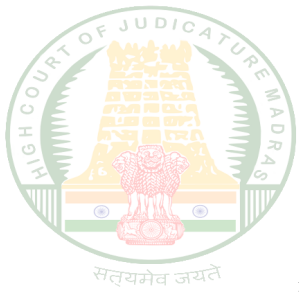
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call for the record and Section 386 mandates that after the record is received, the Appellate Court may dispose of the appeal after hearing the accused or his counsel. Therefore, the plain language of Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution simplicitor. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. 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 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.

.....

Such a view can bring about a stalemate situation. The appellant and his lawyer can remain absent with impunity, not once but again and again till the Court issues a warrant for the appellant's presence. A complaint to the Bar Council against the lawyer for non-appearance cannot result in the progress of the appeal. If another lawyer is appointed at State cost, he too would need the presence of the appellant for instructions and that would place the Court in the same situation. Such a procedure can, therefore, prove cumbersome and can promote indiscipline. Even if a case is decided on merits in the absence of the appellant, the higher court can remedy the situation if there has been a failure of justice. This would apply equally if the accused is the respondent for the obvious reason that if the appeal cannot be disposed of without hearing the respondent or his lawyer, the progress of the appeal would be halted."

7. Subsequently, a Division Bench of the Hon'ble Supreme Court, in the case of K.S.Panduranga vs State Of Karnataka reported in AIR 2013 SC 2164 has reiterated



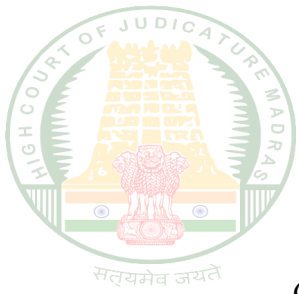
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the position stated by the Hon'ble Supreme Court in Bani Singh's case above referred and held as follows:

“22. From the aforesaid decision, the principles that can be culled out are (i) that the High Court cannot dismiss an appeal for non- prosecution simpliciter without examining the merits; (ii) that the court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent; (iii) that the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so; (iv) that it can dispose of the appeal after perusing the record and judgment of the trial court; (v) 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, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and (vi) that if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation.

23. In Babu Limbaju Kamble (supra), and Man Singh (supra), this Court has not laid down as a principle that it is absolutely impermissible on the part of the High Court to advert to merits in a criminal appeal in the absence of the counsel for the appellant. We have already stated that the pronouncement in A.S. Mohammed Rafi (supra), dealt with a different situation altogether and, in fact, emphasis was on the professional ethics, counsel's duty, a lawyer's obligation to accept the brief and the role of the Bar Associations. The principle laid down in Sham Deo Pandey (supra) relying on Siddanna Apparao Patil (supra), was slightly modified in Bani Singh (supra). The two-Judge Bench in Mohd. Sukur Ali(supra), had not noticed the binding precedent in Bani Singh(supra).

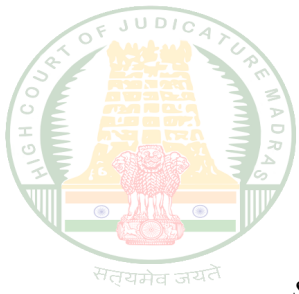
29. Regard being had to the principles pertaining to binding precedent, there is no trace of doubt that the principle laid down in Mohd.Sukur Ali (supra) by the learned Judges that the court should not decide a criminal



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case in the absence of the counsel of the accused as an accused in a criminal case should not suffer for the fault of his counsel and the court should, in such a situation, must appoint another counsel as amicus curiae to defend the accused and further if the counsel does not appear deliberately, even then the court should not decide the appeal on merit is not in accord with the pronouncement by the larger Bench in Bani Singh(supra). It, in fact, is in direct conflict with the ratio laid down in Bani Singh (supra). As far as the observation to the effect that the court should have appointed amicus curiae is in a different realm. It is one thing to say that the court should have appointed an amicus curiae and it is another thing to say that the court cannot decide a criminal appeal in the absence of a counsel for the accused and that too even if he deliberately does not appear or shows a negligent attitude in putting his appearance to argue the matter. With great respect, we are disposed to think, had the decision in Bani Singh (supra) been brought to the notice of the learned Judges, the view would have been different.

36. In view of the aforesaid annunciation of law, it can safely be concluded that the dictum in Mohd. Sukur Ali(supra) to the effect that the court cannot decide a criminal appeal in the absence of counsel for the accused and that too if the counsel does not appear deliberately or shows negligence in appearing, being contrary to the ratio laid down by the larger Bench in Bani Singh (supra), is per incuriam. We may hasten to clarify that barring the said aspect, we do not intend to say anything on the said judgment as far as engagement of amicus curiae or the decision rendered regard being had to the obtaining factual matrix therein or the role of the Bar Association or the lawyers. Thus, the contention of the learned counsel for the appellant that the High Court should not have decided the appeal on its merits without the presence of the counsel does not deserve acceptance. That apart, it is noticeable that after the judgment was dictated in open court, the counsel appeared and he was allowed to put forth his



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submissions and the same have been dealt with.”

9.Considering the legal position above referred, this Court has no hesitation to hold that the dismissal of the Criminal Appeal for default, cannot legally be sustained and as such, the same is liable to be set aside.”

6. Strictly directing the petitioner to diligently conduct the case before the learned Trial Court, this Court hereby set set aside the order in S.T.C.No.22 of 2021 dated 05.12.2023 and remand back the same before the learned Trial Court for fresh consideration on payment of cost of Rs. 5,000/- to the District Legal Services Authority, Karur within a period of one (1) week from the date of receipt of copy of this order.

7. In view of the above, this Criminal Revision Case is disposed of.

18.07.2025

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

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- 1.The District Munsif cum Judicial Magistrate Court,
Aravakurichi, Karur.
- 2.Do through the Chief Judicial Magistrate,
Karur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI ,J.

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Order made in
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