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Crl.R.C.(MD) No.8 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.02.2025

Delivered on : 07.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.8 of 2025
and
Crl.M.P(MD)Nos.64 and 66 of 2025

Saravanan

... Petitioner

Vs.

Krishnaveni

... Respondent

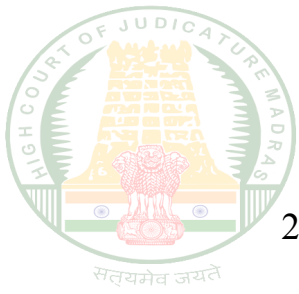
Prayer : This Criminal Revision has been filed under Section 438 r/w 442 of BNSS, to call for the records pertaining to the judgment in C.A.No.69 of 2024, dated 26.07.2024 on the file of the learned Additional District Judge (FTC), Theni confirming the trial Court judgment in S.T.C.No.218 of 2023, dated 06.04.2024 on the file of the learned Judicial Magistrate, Fast Track Court, Uthamapalayam and to set aside the conviction and sentence.

For Petitioner : Mr.T.Bashyam

For Respondent : Mr.K.Guhan

ORDER

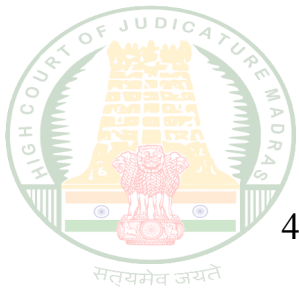
The Criminal Revision is directed against the judgment in C.A.No.69 of 2024, dated 26.07.2024 on the file of the learned Additional District Judge (FTC), Theni, dismissing the appeal for default.



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2. The respondent/complainant has filed a private complaint under Section 200 of Cr.P.C., against the appellant for the offence under Section 138 of Negotiable Instruments Act.

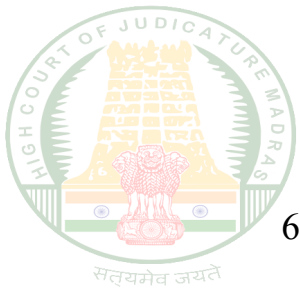
3.The case of the respondent/complainant is that the petitioner has borrowed a sum of Rs.6,00,000/- on 03.05.2023 as hand loan from the complainant and issued a cheque, dated 15.07.2023 drawn on HDFC Bank, Cumbum Branch in favour the complainant; that when the complainant presented the cheque for collection through his banker Union Bank of India, Uthamapuram Branch, the same was returned for want of sufficient funds in the bank account of the accused on 27.09.2023; that when the same was intimated to the accused, he requested the complainant to present the cheque again and accordingly, when the cheque was presented again, the same was returned again dishonored as insufficient funds on 12.10.2013; that thereafter, the complainant sent a legal notice, dated 30.10.2023 demanding the amount covered by the cheque; that the accused having receipt of the legal notice on 31.10.2023, has neither sent any reply nor made any payment and that therefore, the complainant was constrained to file the complaint under Section 200 Cr.P.C.



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4. The learned Magistrate, after full trial, has passed the judgment, dated 06.04.2024 finding the appellant guilty for the offence under Section 138 of NI Act and convicted and sentenced him to undergo six months simple imprisonment and to pay a compensation of Rs.6,00,000/- to the complainant under Section 357(3) of Cr.P.C. Aggrieved by the judgment of conviction, the accused has preferred an appeal in Crl.A.No.69 of 2024 and was pending on the file of the Additional District Court (FTC), Theni. When the appeal was taken up for hearing on 26.07.2024, as there was no representation for the appellant and the appellant was called absent and by recording the presence of the respondent's counsel, dismissed the appeal. Challenging the dismissal of the appeal, the present revision came to be filed.

5.The learned counsel for the revision petitioner would submit that the appellate Court has dismissed the appeal only on the ground of non appearance; that the petitioner's non appearance was neither willful nor wanton; that the petitioner could not appear due to his ill health; that the complainant evidence is full of contradictions and he could not specifically say when the cheque was issued and that even on merits, the revision petitioner is having a good case in the appeal.



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6.The learned counsel for the petitioner would further contend 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 and that therefore, the impugned judgment is legally unsustainable and the same is liable to be set aside.

7.The learned counsel for the respondent would fairly concede that the criminal appeal cannot be dismissed for non prosecution. But he would submit that the appellant, after filing of the appeal, has been dragging on the proceedings and that since there was no representation for the appellant and the appellant was also called absent, the learned appellate Judge has proceeded to dismiss the appeal. He would further submit that in case of allowing the revision, the appellate Court may be directed to hear the appeal and dispose of the same within a short period to be stipulated by this Court.

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 :



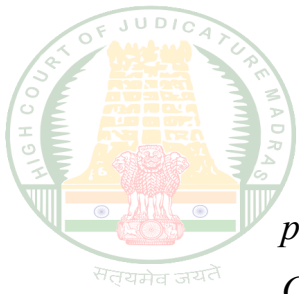
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“5. The learned Counsel for the petitioner would rely on the decision of the Hon'ble Supreme Court in the case of **K.Muruganandam and Others Vs. State represented by the Deputy Superintendent of Police and another** in Crl.A.No.809 of 2021, dated 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



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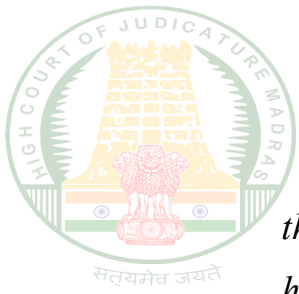


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plain language of Section 385 makes it clear that if the Appellate Court does not consider the appeal fit for summary dismissal, it 'must' call for the record and Section 386 mandates that after the record is received, the Appellate Court may dispose 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 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



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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 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.



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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 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*



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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 submissions and the same have been dealt with.”



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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.

10. In the result, the Criminal Revision is allowed and the impugned judgment made in C.A.No.69 of 2024, dated 26.07.2024 on the file of the Additional District Judge (FTC), Theni, is hereby set aside. The learned appellate Judge is directed to restore the appeal to its file and to proceed with the hearing of the appeal and dispose of the same within a period of two months from the date of receipt of copy of this order. In case, if the revision petitioner / appellant again is not represented by his Counsel, or is adopting dilatory tactics, the learned first Appellate Judge is directed to follow the dictum laid down by the Hon'ble Supreme Court in ***Bani Singh & Ors vs State Of U.P.***, reported in ***AIR 1996 SC 2439*** above referred. Consequently, connected Miscellaneous Petitions are closed.

07.03.2025

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To

- 1.The Additional District Judge (FTC), Theni.
- 2.The Judicial Magistrate, Fast Track Court,
Uthamapalayam.
- 3.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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ORDER MADE IN
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Crl.M.P(MD)Nos.64 and 66 of 2025

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