

(2015) 03 MAD CK 0574

In the Madras High Court

Case No : Criminal Rev. No. 449 of 2015

D.L. Saleem Ahamed

APPELLANT

Vs

Evan Paper and Board (India) Pvt. Ltd.

RESPONDENT

Date of Decision : 28-03-2015

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 372, 389
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) 3 MLJ(Cri) 253

Hon'ble Judges : P. Devadass, J

Bench : Single Bench

Advocate : R. John Sathyan, for the Appellant

Final Decision : Allowed

Judgement

P. Devadass, J—This revision has been directed by the accused in a cheque bouncing case. The respondent prosecuted the appellant/accused in a cheque bouncing case before the learned Metropolitan Magistrate, Fast Track Court No. 1, Egmore, Chennai in C.C. No. 931 of 2010.

2. After considering the arguments of both and on perusing the evidence, the learned Magistrate convicted the accused under Section 138 of Negotiable Instrument Act and sentenced him to undergo 1 year simple imprisonment and also directed him to pay a compensation of Rs. 10,00,000/-.

3. Aggrieved, the accused directed C.A. No. 226 of 2014. It was pending before the learned XVIII Additional Sessions Judge, City Civil Court, Chennai. The appellant was on appeal bail.

4. On 06.04.2015, the appellate Court dismissed the appeal as under:

Order

"This Criminal Appeal has been filed by the petitioner against the order of the

Fast Track Court at Magistrate Level-1, Egmore, Chennai-600008 dated 06.08.2014 and C.A. No. 226/2014 in C.C. No. 931/2010 convicted and sentenced to undergo simple imprisonment for one year. Under Section 138 of N.I. Act with payment of compensation of Rs. 10,00,000/- to the complainant within 3 months in default to undergo simple imprisonment for 3 months.

10.40 A.M. Appellant absent No representation. Counsel for respondent present. Pass over.

02.45 P.M. Appellant absent no representation. Appellant continuously absent. In the absence of appellant no valid reason for further adjournment it appears that appellant not interested in further disposal of appeal. Hence, appeal dismissed for non-prosecution."

5. The learned counsel for the revision petitioner contends since the learned counsel for the appellant underwent surgical treatment, he could not present himself before the Appellate Court. However, without giving any opportunity, the Appellate Court dismissed the appeal. It has disposed of the criminal appeal ex-parte like a civil case.

6. As the matter lies in a narrow campus and it could be disposed of on legal issue itself, without wasting much time, I propose to dispose of this revision today itself.

7. As against the judgment of a Criminal Court recording conviction and awarding sentence, right of appeal has been provided to the convicted person under Section 372 of Cr.P.C. Right of appeal is statutory. Disposal of the appeal has been elaborately dealt with in Chapter XXXIX of the Code of Criminal Procedure, 1973. Ex-parte disposal is known in civil law but it is unknown in criminal law, more particularly, in a criminal appeal, a person has been convicted. Article 21, Constitution of India granted life and liberty to everyone. It can be taken away by a procedure established by law. The procedure must be "fair", "reasonable" and "not unjust" (see *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and Another, AIR 1978 SC 597 : (1978) 1 SCC 248 : (1978) 2 SCR 621). Disposal of a criminal appeal not on merit but ex-parte will militate against said principles.

8. The disposal of criminal appeal could take different ways. Even at the first stage itself, if there is no case, no merit at all, the Appellate Court can dispose of the appeal summarily. But, it must record its reasoned finding. It is possible if it refers to the merit of the matter, the judgment of the appellate Court must disclose that the appellate Judge has applied his mind to the record of the case. Sometimes, an appellant will get appeal the relief of appeal bail under Section 389 of Cr.P.C. and thereafter forget his appeal, appellate Court, even his counsel.

9. As regards the disposal of the criminal appeal, it could be classified under two categories. One is, where the appellant is in jail and the other one is appellant on bail. In some cases, the appellant may not be assisted by a learned counsel. In some cases, when the appeal is taken up for disposal, the learned counsel for the

appellant may not appear. In such circumstances, what the Appellate Court has to do. This has been recently dealt with by the Hon''ble Supreme Court in Surya Baksh Singh Vs. State of Uttar Pradesh, (2013) 10 AD 565 : (2013) 4 RCR(Criminal) 880 : (2013) 12 SCALE 492 . In this connection, the two Judge Bench referred to a three judge Bench judgment of the Hon''ble Supreme Court in K.S. Panduranga Vs. State of Karnataka, (2013) 3 AD 414 : AIR 2013 SC 2164 : (2013) 116 CLT 669 : (2013) CriLJ 1665 : (2013) 3 CTC 631 : (2013) 3 JT 514 : (2013) 2 RCR(Criminal) 219 : (2013) 3 SCALE 152 : (2013) 3 SCC 721 : (2013) 1 SCC(L&S) 791 : (2013) AIRSCW 1382 and observed as under:

"19.1. that the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. that the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. that the Court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. that it can dispose of the appeal after perusing the record and judgment of the trial Court.

19.5. 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 appellant-accused 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

19.6. that if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

10. In Surya Baksh Singh v. State of Uttar Pradesh (supra) case, the Hon''ble Supreme Court laid down the guidelines as to the disposal of the criminal appeal, when the counsel for the appellant was not present. It is not that when the counsel for the appellant was not present, the Court cannot dispose of the appeal. The Court can adjourn the appeal to enable the counsel to appear or without adjourning the criminal appeal, the Court can dispose of the criminal appeal, but, after fully referring to the evidence on record, either it can allow the appeal or dismiss it. But, it must dispose of the appeal on merit.

11. Now, applying the said principle, it is clear that the Appellate Court has disposed of the appeal like a Civil Court. It is an ex-parte disposal. Not at all merit of the matter has been considered. There was no discussion in the impugned order disclosing that the appellate Judge has considered the evidence and disposed of the matter on merit.

12. Thus, the disposal of the criminal appeal by the Appellate Judge is not in accordance with law. It is against principles of natural justice. It is against fundamental right of the accused. Consequently, the appellant has been

condemned unheard. He was denied basic justice. In view of the foregoing, this revision is allowed. The order of the learned XVIII Additional Sessions Judge, Chennai, dated 06.04.2015 dismissing the criminal Appeal in CrI. A. No. 226 of 2014 is set aside. C.A. No. 226 of 2014 is restored to file. The learned XVIII Additional Sessions Judge, Chennai will dispose of the criminal appeal following the guidelines of the Hon"ble Supreme Court given in Surya Baksh Singh v. State of Uttar Pradesh (supra). The appellant or his counsel will appear before the said Appellate Court on 30.06.2015. The appellant will also give notice of hearing to the respondent. He will also file proof of service before the said Court. The Appellate Court shall dispose of the criminal appeal in a manner known to law.