

(2011) 04 MAD CK 0502

In the Madras High Court

Case No : Criminal R.C. No. 479 of 2009

K. Raja

APPELLANT

Vs

P.G. Rajendran (died) (Manimegalai, Sangeetha Raju and
Sangeetha Priya)

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357(3)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 04 MAD CK 0502

Hon'ble Judges : R. Mala, J

Bench : Single Bench

**Advocate : R. Marudhachalamurthy and M. Guruprasad, for the Appellant;
Notice served, for the Respondent**

Final Decision : Allowed

Judgement

R. Mala, J.—Crl. R.C. is preferred against the judgment dated 3.12.2008 in Crl. A. No. 129 of 2007 on the file of the Additional District and Sessions Court (Fast Track Court No. 2), Salem, confirming the conviction and sentence passed in C.C. No. 387 of 2002, dated 23.8.2007, on the file of the Judicial Magistrate's Court No. 1, Arthur, whereby the revision Petitioner/accused was convicted for the offence u/s 138 of the Negotiable Instruments Act, and sentenced to undergo one year simple imprisonment, and to pay Rs. 2 lakhs to be paid as compensation to the Respondent/complainant (since deceased), u/s 357(3) Code of Criminal Procedure, within three months, in default, to undergo three months' simple imprisonment.

2. The deceased Respondent/complainant preferred a complaint u/s 138 of the Negotiable Instruments Act, stating that the revision Petitioner/accused borrowed Rs.1,50,000/- from the deceased Respondent/complainant on 7.8.2002, agreeing to repay the same with interest at 12% and on that day, to discharge the same, the accused issued a cheque bearing No. 688348, dated

7.9.2002 in favor of the complainant. When the cheque was presented for encashment, it was returned as "Account closed". Statutory notice has been issued, which was returned. Hence, the complainant preferred a complainant to punish the accused for the offence u/s 138 of the Negotiable Instruments Act.

3. The trial Court, followed the procedures and since the revision Petitioner/accused pleaded not guilty, examined P.W.1 and marked Exs.P-1 to P-6 and on the side of defense, D.W.1 was examined and convicted the accused and sentenced him as stated above.

4. During the pendency of the criminal appeal before the first appellate Court, the complainant died and since steps have not been taken, the learned first appellate Judge dismissed the appeal, stating that, "Steps not taken. No representation. Criminal Appeal dismissed." Challenging the same, the present Crl. R.C. is filed by the revision Petitioner/accused.

5. Though the Respondents have been served with notice, neither they appeared in person, nor represented through counsel.

6. Learned Counsel appearing for the revision Petitioner/accused submitted that the appellate Court is the last fact finding Court and merely because the complainant died, and since no steps have been taken, learned appellate Judge has not considered the materials available on record and has not passed the orders on merits, and simply dismissed the appeal, and hence, learned counsel for the revision Petitioner/accused wanted to remand the case to the first appellate Court for considering the oral and documentary evidence and to decide the case in accordance with law, and on merits.

7. As already stated, even though the Respondents have been served with notice, none represented the case.

8. Considering the submissions made by learned Counsel for the Petitioner/accused, and on perusal of the impugned judgment of the first appellate Court, it is seen that learned first appellate Judge has not considered the materials available on record and he ought to have given opportunity to implead the legal representatives of the complainant and decided the case on merits. I find some force in the argument advanced by learned Counsel appearing for the revision Petitioner/accused that opportunity must be given to the Respondents to put forth their case before the first appellate Court.

9. At this juncture, learned Counsel appearing for the revision Petitioner/accused relied on the judgment of the Apex Court reported in Bani Singh and others Vs. State of U.P., wherein the Supreme Court held that the dismissal of appeal for default or non-prosecution without going into the merits of the case, is illegal and the appellate Court must dispose of the appeal on merits after perusal and scrutiny of the record.

10. As per the dictum of the Apex Court, I am of the view that this is a fit case for setting aside the impugned order of the first appellate Court.

11. For the reasons stated above:

(a) The Crl. R.C. is allowed.

(b) The impugned order of the first appellate Court is set aside.

(c) The case is remanded to the first appellate Court, for deciding the appeal on merits and in accordance with law, after giving opportunity of hearing to both sides.

(d) The first appellate Court is directed to dispose of the appeal within three months from the date of receipt of a copy of this order along with Records.

(e) Registry of this Court is directed to send back the Records along with this order copy to the first appellate Court within fifteen days from today.