
(2014) 07 KL CK 0130
In the High Court Of Kerala
Case No : Crl. R.P. No. 1241 of 2014

Shakela

APPELLANT

Vs

Arjun Amaravathi Chits (P) Ltd.

RESPONDENT

Date of Decision : 15-07-2014

Acts Referred:

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

Citation : (2014) 3 KHC 303 : (2014) 3 KLT 429

Hon'ble Judges : P. Ubaid, J

Bench : Single Bench

Advocate : Zubair Pulikkool, Advocate for the Appellant; C. Vathsalan, K. Rakesh Roshan, V. Thushara and R. Rema, Public Prosecutor, Advocate for the Respondent

Judgement

P. Ubaid, J.—A wrong and illegal judgment of the Additional Sessions Court, Vatakara, dismissing a Criminal Appeal for non-compliance of the conditions imposed by the Court of Session for suspension of sentence pending appeal, is sought to be set aside, in this revision brought by the accused in S.T. No. 44/2011 of the Judicial First Class Magistrate Court II, Vatakara. The trial court convicted hereunder S. 138 of N.I. Act On conviction she was sentenced to undergo simple imprisonment for three months, and was also directed to pay a compensation of Rs. 51,000/- to the complainant under S. 357(3) Cr.P.C. Aggrieved by the conviction and sentence the accused brought appeal before the Court of Session, Kozhikode as Cri. A. No.248/2012. In appeal the Court of Session ordered suspension of sentence on condition. Accordingly, the appellant was ordered to be released on bail, and the Criminal Appeal was made over for hearing to the learned Additional Sessions Judge, Vatakara. When the appeal came up for consideration, the learned Addl. Sessions Judge found non-compliance of the conditions imposed by the Court of Session for suspension of sentence. On the said ground the learned judge dismissed the appeal by judgment dated 28.9.2012.

2. Much probe or hearing is not required to find that the said dismissal is quite illegal. An experienced Sessions Judge is not expected to make such a disposal, dismissing the Criminal Appeal for default, on the ground that the appellant failed to execute bond, or to make deposit as a condition for suspension of sentence. Such failure, will, of course, have legal consequences, but the Criminal Appeal as such cannot be dismissed on that ground. The consequence is that at any time the appellant could be arrested in enforcement of the sentence imposed by the trial court. This will not stand in the way of the appeal being heard or decided on merits. In so many decisions this Court, and the Hon"ble Supreme Court have settled the law that a Criminal Appeal will have to be decided on merits, and an appeal challenging conviction and sentence cannot at all be dismissed for default. It is quite unfortunate that the learned Additional Sessions Judge made the impugned dismissal, ignoring the settled position. The wrong committed by the court below will have to be corrected by this Court in revision. In the result, this Criminal Revision Petition is allowed. The impugned judgment of the court below dismissing Crl.A. No. 248/2012 is hereby set aside, and the appeal is remanded to the court below for hearing and disposal on merits. As both sides are present today in Court, the parties are directed to make appearance in the Court below on 18.8.2014.

Registry will forward a copy of this order to the Kerala Judicial Academy for necessary steps or action, as part of judicial training.