

**Petitioner Vs. Respondent**

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**Court :** Chennai

**Decided On :** Dec-15-2016

**Judge :** M. Venugopal

**Appeal No. :** Crl.O.P.No. 24154 of 2016 In Crl.A.Sr.No. 37877 of 2016

**Appellant :** Petitioner

**Respondent :** Respondent

**Judgement :**

**M. Venugopal, J.**

1. The Petitioner/Appellant/Complainant has filed the present Criminal Original Petition seeking 'Grant of Special Leave' as against the Order of Acquittal dated 04.04.2016 in S.T.C.No.6 of 2007 passed by the Learned Judicial Magistrate No.II, Chidambaram.

2. The prime contention advanced on behalf of the Petitioner is that the complaint was taken on file in the year 2007 and the Complainant was examined as P.W.1 on 16.07.2007 and thereafter, the Respondent/Accused dragged the case for nearly 8 years without cross examining P.W.1. Ultimately, P.W.1 was cross examined on 04.06.2015. As such, the trial Court had wrongly arrived at a conclusion that the Petitioner/Appellant/Complainant is not interested in prosecuting the case.

3. The Learned Counsel for the Petitioner/Appellant contends that on 04.04.2016, when the impugned order was passed in S.T.C.No.6 of 2007 the presence of the Petitioner/Appellant/ Complainant was not an indispensable one, but this aspect of the matter was not appreciated by the trial Court in a judicious manner.

4. Lastly, it is submitted on behalf of the Petitioner/Appellant that even on the date of the impugned order being passed resulting in dismissal of the complaint, the Respondent/Accused had remained absent and on his behalf, a Petition under Section 317 Cr.P.C. was filed and allowed and therefore, a practical, pragmatic, meaningful and purposeful approach ought to have been resorted to by the trial Court. Unfortunately, in the present case, the same was not resorted to, resulting in miscarriage of Justice.

5. In response, the Learned Counsel for the Respondent/ Accused contends that the trial Court in the impugned order had very rightly observed that the complaint was pending for nearly a Decade and in fact, when the Complainant's side was closed on 12.02.2016, it appears that the Petitioner/Appellant/Complainant has little interest to prosecute the case any further and in short had not cooperated with the Court, which entail in dismissal of the complaint filed by the Appellant/Complainant.

6. In effect, the pith and substance of the stand taken on behalf of the Respondent/Accused is that the trial Court had exercised its discretion in a proper, fair and judicious way and the same could not be found fault with.

7. This Court has heard the submissions of the Learned Counsel for the Petitioner/Appellant/Complainant and the Learned Counsel for the Respondent/Accused and noticed their contentions.

8. It is to be pointed out that when a 'Court of Law' deals with a Petition for 'Grant of Leave', it is to see that a frivolous Appeal is not brought before it so as to prevent the waste of time of the Court concerned. Only to have a check and balance, Section 378(4) Cr.P.C. is brought and to pre-empt the filing of frivolous and otiose Appeal, the Section has come into operative play. But, if the impugned order of the trial Court is perverse and capricious one and if there is failure of

Justice, then, the High Court with its plenary powers can examine the correctness of the impugned order passed in accordance with Law. Even it give appreciate the evidence tendered by the parties in a given case and if there is any misreading of evidence or if there is an error committed by the trial Court either on a point of Fact or point of Law, then, undoubtedly, the High Court can interfere so as to set right the miscarriage of Justice that had taken place at the trial Court's end.

9. On a careful consideration of respective contentions and in view of the fact that the Petitioner/Appellant/Complainant has raised some tangible/substantial grounds in his 'Memorandum of Grounds of Appeal', this Court is of the considered view that the Petitioner/ Appellant/Complainant has made out an ex facie case for the 'Grant of Special Leave' to prefer an Appeal.

10. Accordingly, the Criminal Original Petition is allowed.

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