

Petitioner Vs. Respondents

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Court : Chennai

Decided On : Sep-06-2016

Judge : M. Venugopal

Appeal No. : MP. No. 1 of 2014 in Crl. A. SR. No. 18525 of 2010

Appellant : Petitioner

Respondent : Respondents

Judgement :

1. Heard both sides.

2. Although publication was effected in respect of the service of Respondent by means of paper publication in Malai Sudar dated 19.08.2016, clearly informing that the notice was ordered to be returned by 26.08.2016 and that the Respondent/Accused was directed to be present at 10.30 A.M. either in person or through pleader, today when the matter is come up for hearing in M.P.No.1 of 2014 in Crl.A.SR.18525 of 2010, there is no representation on behalf of the Respondent either in person or through Learned Counsel.

3. At this stage, the Learned counsel for the Petitioner brings it to the notice of this Court that this Court on 13.02.2014 in M.P.No.1 of 2010 in Crl.A.SR.No.18525 of 2010 at paragraphs 2 and 3, inter-alia observed and passed the following order:

2. Though this Court by order dated 23.01.2014 has granted three weeks time to take fresh notice to the respondent, so far no steps has been taken.
3. In such circumstances, I do not find any merits in keeping this petition and hence, the present application stands dismissed for not taking steps.
4. In this connection, the Learned counsel for the Petitioner brings it to the notice of this Court that in compliance with the order dated 23.01.2014, private notice was taken to the Respondent through RPAD on 28.01.2014 and that the notice was returned unsaved subsequently. It appears that the returned cover was placed in the bundle itself. However, the wrong bundle was brought by the Petitioner's counsel on 13.02.2014 and also it is the categorical version of the Petitioner that they had brought to the knowledge of the Court but they could not effectively represent about the service of notice and ultimately, this Court was per forced to dismiss the aforesaid Criminal Appeal for default. Subsequently, the correct bundle was traced out by the Petitioner's counsel and it came to light that service was already taken and notice was returned unsaved and that the same was filed before this Court, together with an affidavit.
5. The fervent plea of the Learned counsel for the Petitioner is that only because of the fact that a wrong bundle was brought to this Court on 13.02.2014 and also at a later point of time, the correct bundle was traced out and it was found out that the service was duly taken and that notice got returned unserved. As such, because of these reasons, the present M.P.No.1 of 2014 is filed to set aside the order of dismissal dated 13.02.2014 in M.P.No.1 of 2010 in the above Criminal Appeal and requested to restore the same to the file of this Court in furtherance of substantial cause of justice.
6. This Court has heard the Learned counsel for the Petitioner and noticed the contentions.
7. In the instant case, this Court on being subjectively satisfied as to the reasons ascribed by the Petitioner/Appellant at para 2 of the affidavit in M.P.No.1 of 2014 in CrI.A.SR.No.18525 of 2010 and also this Court bearing in mind a primordial fact that substantial justice is to be delivered to the parties overriding the technicalities

or hyper technicalities, at this stage, in the interest of justice, allows the M.P.No.1 of 2014 without costs.

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