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Court : Chennai Madurai

Decided On : Jun-20-2016

Judge : The Honourable Dr. Justice P. Devadass

Appeal No. : Crl.RC(MD) No. 409 of 2016 & Crl.M.P.(MD) Nos. 4880 & 4881 of 2016

Appellant : Muniyandi and Another

Respondent : State represented through The Inspector of Police, Madurai

Judgement :

(Prayer: Criminal Revision Petition is filed, under Section 397(1) r/w 401 Cr.P.C., to call for the records in Criminal Appeal No.30(A) of 2012 on the file of the learned VI Additional District and Sessions Judge, Madurai filed against the judgment passed in Calendar Case No.130 of 2002 on the file of the learned Judicial Magistrate No.1, Madurai and set-aside the order passed in Criminal Appeal No.30(A) of 20112 dated 04.11.2015 on the file of the learned VI Additional District and Sessions Judge, Madurai.)

1. Now the short and simple question is whether like a suit or appeal suit, a criminal appeal could be dismissed for default.

2. In this respect a civil case is different from a criminal case. In Civil Law, *ex parte* disposal, dismissal for default is well known. But it is unknown in criminal law. Under the Criminal procedure, there is no *ex parte* disposal, *ex parte* conviction, *ex parte* sentence. An accused cannot be punished without a hearing.

3. As per Article 22(1) of the Constitution of India, a person accused of a crime is entitled to be defended by a lawyer of his choice. It is a fundamental right. It is a constitutional right. It is a basic human right. In the absence of counsel for the accused conducting trial and punishing the accused is against law. It is not fair trial.

4. In the absence of a lawyer, if criminal proceedings are conducted, it is like conducting trial with deaf and dumb person. It flows from Article 22(1) of the Constitution of India. This has also been reiterated in Section 303 Cr.P.C. Such right to be defended by lawyer cannot be taken away/curtailed. It is the bounden duty of a Court to ensure availability of proper legal assistance to the accused. It also arises from Article 39-A Constitution of India. This has also been reiterated in Section 304 Cr.P.C. Such right is not only available in the original/ trial Court but also in the appellate and revisional Courts as well as in this Court, otherwise it would not be a fair trial.

5. In a democratic country, one of the basis of personal freedom is having legal assistance. Equally if a person appeals as against his conviction, the said principles applies to the appeal proceedings. There is no disposal/dismissal of a criminal appeal for default. There cannot be an *ex parte* judgment under criminal law. If an appeal is dismissed for default, it will result in conviction and the sentence get confirmed. However, it is without an hearing. It is against Article 22(1) of the Constitution of India and Sections 303 and 304 I.P.C.

6. Sometimes an appellant may fails to appear and prolongs the Criminal Appeal. Even then such absconding appellant must be given legal assistance through a lawyer. After that if the appeal is dismissed or allowed that is a different matter. In such circumstances, the Court has to engage some lawyer to represent the absentee appellant. The Court can appoint a legal aid counsel or lawyer as *amicus curiae*. Only after hearing on merits a conviction can be confirmed. It also equally

applies to appeals filed as against order of acquittal.

7. In this case originally the accused was convicted in C.C.No.130 of 2002 under 138 of N.I. Act by the learned Judicial Magistrate No.I, Madurai. Thereafter, he filed Criminal Appeal No.30(A) of 2012 which was pending before the learned VI Additional Sessions Judge, Madurai. On 04.11.2015, the learned appellate Judge passed the following order:

Appellants notice already sent and returned as left Appellants called absent. No representation for Appellants. Hence, this appeal is dismissed for default.

8. It is seen that the learned Judge has dismissed the appeal for default. It means the conviction and sentence are confirmed without a hearing. It is not a merit disposal. A suit can be dismissed for default. But not a criminal appeal. So, the impugned judgment passed by the learned VI Additional Sessions Judge is vitiated.

9. Ordered as under:

(1) Revision is allowed.

(2) The impugned order passed by the VI Additional Sessions Judge, Madurai dated 04.11.2015 in Crl.A.No.30(A) of 2012 is set aside..

(3) The VI Additional Sessions Judge, Madurai will restore the criminal appeal.

(4) Both side counsels on record in the appellate Court will appear before the said Court on 22.06.2016.

Consequently, connected Miscellaneous Petitions are closed.

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