

Thangappan Vs. State Represented By

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SooperKanoon Citation : sooperkanoon.com/48584

Court : Chennai

Decided On : Feb-25-2015

Judge : M.Sathyannarayanan

Appellant : Thangappan

Respondent : State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

25. 02.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Revision Case (MD)No.87 of 2015 and M.P(MD)No.1 of 2015 Thangappan ... Petitioner/ Appellant/ Accused Vs. State represented by The Inspector of Police, Gandharvakottai Police Station, Pudukkottai District. (Cr.No.539 of 1996) ... Respondent/ Respondent/ Complainant Prayer : Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to set aside the judgment dated 03.12.2014 passed in C.A.No.10 of 2011 by the learned Additional District and Sessions Judge cum Special Judge for E.C and NDPS Act Cases, Pudukkottai, in confirming the conviction and sentence, vide judgment dated 03.08.2010, passed in C.C.No.564 of 1998, by the learned Judicial Magistrate, Pudukkottai. !For Petitioner : Mr.R.Karunanidhi ^For Respondent : Mrs.S.Prabha, Govt. Advocate (Crl. Side) :

ORDER

By consent, the main revision itself is taken up for final disposal.

2. The revision petitioner is the sole accused in C.C.No.564 of 1998 on the file of the Court of Judicial Magistrate, Pudukkottai and he suffered a conviction and sentence, vide judgment dated 03.08.2010, thus: Accused Conviction Sentence U/s.279 I.P.C. To pay a fine of Rs.200/- with a default sentence of simple imprisonment for one week. U/s.304-A I.P.C. To undergo simple imprisonment for six months. U/s.337 I.P.C. (13 counts) To pay a fine of Rs.200/- each, with a default sentence of simple imprisonment for one week. U/s.338 I.P.C. (2 counts) To undergo simple imprisonment for three months.

3. The revision petitioner herein, challenging the conviction and sentence, filed the appeal in C.A.No.10 of 2011 on the file of the Court of Additional District and Sessions Judge, Pudukkottai.

4. When the matter was listed on 03.12.2014, the lower appellate Court noted that the revision petitioner/appellant was absent and though his Counsel reported 'No Instructions', he has not appeared before the Court and also not engaged any Counsel of his choice as per the undertaking given before the Court and also attempts were made to appoint a Legal Aid Counsel, but he refused to accept the same and accordingly, dismissed the appeal for default, vide impugned order dated 03.12.2014 and challenging the legality of the same, the present revision is filed.

5. The learned Counsel for the revision petitioner would submit that after the dismissal of the appeal for default on 03.12.2014, he has been taken into custody on 26.01.2015 and he remained incarcerated and further that his absence on that day was neither wilful nor wanton and in any event, the lower appellate Court ought to have appointed an Amicus Curiae and proceeded with the appeal or disposed of the appeal on merits by looking into the records, however, has dismissed the appeal for default and the said course adopted by the lower appellate Court is wholly unsustainable and prays for interference.

6. Mrs.S.Prabha, learned Government Advocate (Criminal Side) for the respondent would submit that the appellate was non-co-operative throughout the

pendency of the appeal and in spite of enough indulgence shown by the lower appellate Court, he has not chosen to engage any Counsel of his own choice and the Court also made attempts to appoint a Legal Aid Counsel, but it was refused by the revision petitioner and the lower appellate Court left with no other option, has dismissed the appeal for default.

7. This Court, on hearing the rival submissions and upon perusal of the materials available on record, is of the view that the impugned order dismissing the appeal for default, warrants interference and the appeal be restored to file.

8. In *Surya Baksh Singh v. State of Uttar Pradesh* reported in (2014) 14 Supreme Court Cases 222, the Honourable Supreme Court has sorted out the course to be adopted with regard to the absence of the convict or his pleader at the time of hearing the appeal and it is relevant to extract the following: "Thus, the course to be followed by the High Court in case of absence of the convict or his pleader in an appeal against conviction can be summarised as follows: (i) That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits. (ii) That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent. (iii) That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so. (iv) That it can dispose of the appeal after perusing the record and judgment of the trial court. (v) The proviso to Section 368 Cr PC enjoins that an order of confirmation of death sentence shall not be made until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of. The presence or absence of the accused/convict in the cases of death references makes little difference since the High Courts are duty-bound to give the matter their utmost and undivided attention. Indubitably, the assistance of the counsel is very important and helpful to the Court in coming to its conclusion. The legislature has cast an obligation on the appellate court to decide an appeal on its merits only in the case of death references, regardless of whether or not an appeal has been preferred by the convict. (vi) That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to

appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so. (vii) That the High Court can, while exercising inherent powers in its criminal jurisdiction, take all necessary steps for enforcing compliance with its orders. For salutary reason Section 482 Cr PC makes the criminal court much more effective and all pervasive than the civil court insofar as ensuring obedience of its orders is concerned. Section 482 Cr PC clarifies that Cr PC does not circumscribe the actions available to the High Court to prevent abuse of its process, from the inception of proceedings till their culmination. The judicial process includes compelling a respondent to appear before it. When the Court encounters a recalcitrant appellant/convict who shows negligible interest in prosecuting his appeal, none of the sections in Chapter XXIX Cr PC dealing with appeals, precludes or dissuades it from dismissing the appeals. Passing such orders would eventually make it clear to all that intentional and repeated failure to prosecute the appeal would inexorably lead not merely to incarceration but more importantly to the confirmation of the conviction and sentence consequent on the dismissal of the appeal. None of the provisions of the Cr PC can possibly limit the power of the High Court to otherwise secure the ends of justice. (viii) That the appellate Court which is confronted with the absence of the convict as well as his counsel, should immediately proceed against the persons who stood surety at the time when the convict was granted bail, as this may lead to his discovery and production in court. If even this exercise fails to locate and bring forth the convict, the appellate court is empowered to dismiss the appeal. (ix) That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

9. The learned Counsel for the revision petitioner/appellant, on instructions, would submit that if the appeal stands restored to file, immediately, the revision petitioner/appellant will take immediate and urgent steps to engage his Counsel and proceed with the appeal and fully co-operate with the lower appellate Court for speedy disposal of the appeal. The said statement is placed on record.

10. It is also pleaded by the learned Counsel for the revision petitioner/appellant that since he remained incarcerated after the dismissal of the appeal, his plea for suspension of sentence/bail may also be sympathetically considered and this

Court heard the submissions of the learned Government Advocate (Criminal Side) for the respondent in this regard.

11. In the result- (i) this Criminal Revision Case is allowed; (ii) the impugned judgment dated 03.12.2014 passed in C.A.No.10 of 2011 by the learned Additional District and Sessions Judge cum Special Judge for E.C and NDPS Act Cases, Pudukkottai, in confirming the conviction and sentence, vide judgment dated 03.08.2010, passed in C.C.No.564 of 1998, by the learned Judicial Magistrate, Pudukkottai, is set aside; (iii) the appeal filed by the revision petitioner/appellant in C.A.No.10 of 2011 on the file of the Court of Additional District and Sessions Judge, Pudukkottai, stands restored to file; (iv) the lower appellate Court shall take all endeavours to dispose of the appeal at an early date. (v) the revision petitioner/appellant is enlarged on bail, subject to the condition that the personal bond and sureties executed by him at the time of ordering suspension of sentence by the lower appellate Court, shall stand and further that he shall appear before the lower appellate Court on the first working day of every English calendar month at 10.30 a.m., till the disposal of the appeal and also as and when required by the said Court. (vi) Consequently, the connected miscellaneous petition is closed.

Index :Yes/No 25.02.2015 Internet :Yes/No rsb To 1.The Inspector of Police, Gandharvakottai Police Station, Pudukkottai District. 2.The Court of Additional District and Sessions Judge cum Special Judge for E.C and NDPS Act Cases, Pudukkottai. 3.The Court of Judicial Magistrate, Pudukkottai. 4.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. M.SATHYANARAYANAN,J.

rsb Criminal Revision Case (MD)No.87 of 2015 and M.P(MD)No.1 of 2015
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