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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-08-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.49 of 2015

Beena

... Petitioner

Versus

1.Nandakumar
2.S.Manoharan
3.Dhanalakshmi

... Respondents

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order passed by the XVII Metropolitan Magistrate, Saidapet, Chennai, in M.P.No.690 of 2013, dated 04.09.2014.

For Petitioner : No Appearance

For Respondents : No Appearance

ORDER

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order passed by the XVII Metropolitan Magistrate, Saidapet, Chennai, in M.P.No.690 of 2013, dated 04.09.2014, seeking interim relief.

2. Today, though, the matter is listed under the caption "for dismissal", when the matter is taken up, there is no representation for the petitioner. The Hon'ble Apex Court in the judgment reported in (1994) 4 Supreme Court Cases 664, Prasuram Patel & another vs. State of Orissa, has held that the Criminal Appeal cannot be dismissed for default in appearance of the appellant, but, the Court must decide the matter on merits even in the absence of the appellant or his counsel.

3. It is also relevant to refer to the judgment of the Hon'ble Apex Court reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, wherein, the Hon'ble Apex Court has culled out certain principles and has held in paragraph No.19 as follows:-

"19. From the aforesaid decision in Bani Singh vs. State of Uttar Pradesh, reported in (1996) 4 SCC 720, the principles that can be culled out are:



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19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. 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; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

4. Very recently, the Hon'ble Apex Court in the reported in (2014) 14 Supreme Court Cases 222, Surya Baksh Singh vs. State of Uttar Pradesh, has reiterated the above principles culled out in the decision cited supra and has held in paragraph No.15 as follows :-

"15. The discussion would not be complete without noticing the orders in Parasuram Patel vs. State of Orissa, (1994) 4 SCC 664 and Madan Lal Kapoor vs. Rajiv Thapar, (2007) 7 SCC 623. In neither of these cases had the appellate court taken steps available to it to ensure the attendance of the appellant. Instead, it appears that the High Court concerned had adopted the obviously less tedious approach of dismissing the appeals only because neither the appellant nor his counsel were present when the case was called on for hearing. The Court did not ruminate upon the curial malpractice which has now become endemic viz., the filing of appeals by convicts with the obvious intent to frustrate and circumvent sentences passed by criminal courts."

5. In the light of the judgments of the Hon'ble Apex Court cited supra, one thing is crystal clear that no doubt, the Court can decide the matter even in the absence of the petitioner or his counsel, but, only criteria is that the case should be decided on merits in the absence of the petitioner and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining the case on merits. Hence, following the decisions cited supra, the main Criminal Revision Case itself is taken up and disposed of on merits, after perusing the materials available on record, since, there is no representation on behalf of the respondents also.



6. The main ground which has been raised by the petitioner/wife in the revision is that the first respondent/husband is working in TCS and earning more than Rs.50,000/- per month. The further ground raised by the petitioner is that the respondents are owning a house property and getting rental income from the said house property. It is further averred that since, these facts are admitted facts, as per Section 58 of Indian Evidence Act, the admitted facts need not be proved, because, it was never denied by the respondents.

7. On a careful perusal of the impugned order, it is seen that at the time of trial, on the side of the petitioner/wife, four exhibits were marked, viz., complaint, marriage photo, marriage invitation and resignation letter and on the side of the respondents, none has been examined. The Trial Court, in its order, has clearly stated that the resignation letter shows that the petitioner/wife is jobless during the year 2012 and subsequently, whether the petitioner is re-employed or not, has to be proved by respondents by letting in evidence, but, it is not known, as no evidence is let in by the respondents and that only after full fledged trial, the Trial Court can arrive at a conclusion. The Trial Court in its order has further pointed out that when the petitioner has not proved that the house property is owned by the first respondent/husband or he has a share in the house property and it stands in his name, the petition filed by the petitioner seeking interim relief cannot be entertained. In my considered opinion, the Trial Court has rightly dismissed the petition. I do not find any reason to interfere with the reasoned order of the Trial Court, dated 04.09.2014. This Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

paa

To

1. The XVII Metropolitan Magistrate,
Saidapet, Chennai.
2. -do- Through The Chief Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to Mr.M.Govindaraju, Advocate, S.R.No.42706

Cr1.R.C.No.49/2015

VD(CO)

CA(08//09/2015)