

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-08-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1421 of 2012

S.Thangaraj
M/A 49 years
S/o.Chellamuthu
M/s.Abirami Motor Finance
Partner
Thasavanayackanpatti
Vellakoil Via
Tiruppur District.

...Petitioner

Versus

1. State by
The Inspector of Police
Tiruppur North Police Station
(Crime No.68 of 2012)
Tiruppur.

2. V.Karthikayan

...Respondents

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order passed by the learned Judicial Magistrate No.I, Tiruppur, in CrI.M.P.No.8872 of 2012 in C.C.No.32 of 2012, dated 04.10.2012.

For Petitioner

: No Appearance

For Respondents

: Mr.V.Arul
Government Advocate
(Criminal Side) for R.1

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ORDER

The first respondent police is alleged to have seized the vehicle Maruthi Zen Metallic Gold bearing Regn.No.TN-05-H-0855, from the accused/second respondent herein and has registered a case against the accused for the alleged offences under Sections 145, 148, 294 B, 324, 363 and 506 (ii) IPC. Since, the vehicle was used for the commission of the alleged offences, the vehicle was seized and it is

now kept in the custody of the first respondent police. The petitioner/third party, who is the Financier of the vehicle viz., has filed a petition in CrI.M.P.No.8872 of 2012 in C.C.No.32 of 2012 before the learned Judicial Magistrate No.I, Tiruppur, seeking return of the vehicle on the ground that he has financed the accused to purchase the vehicle under Hire Purchase Agreement and the accused has not yet settled the amount due to the petitioner and still some amount remains to be paid by the accused. The said petition was dismissed by order dated 04.10.2012. Aggrieved against the same, the present Criminal Revision Case is filed by the petitioner/third party/Financier.

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/third party. 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:

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 hearing the learned Government Advocate appearing for the first respondent/complainant and also after perusing the materials available on record.

6. The main ground which has been raised by the petitioner/third party, who is the Financier, in the revision is that he has financed the accused to purchase the vehicle under Hire Purchase Agreement and he has not yet settled the amount due to the petitioner and still some more amount remains to be paid by the accused to the petitioner and therefore, he has a right over the property and therefore, seeking to set aside the order passed by the Trial Court dated 04.10.2012 and seeking to return the vehicle to the custody of the petitioner, this Criminal Revision Case is filed.

7. At the outset, I have to state that as rightly pointed out by the Trial Court, the petitioner/third party is only the Financier of the vehicle, who has financed the accused to purchase the vehicle under Hire Purchase Agreement. Further more, it is to be pointed out, though, the petitioner has financed for the purchase of vehicle, he cannot become a real owner, as there is a rival claimant viz., accused, who has purchased the vehicle and therefore, he claims he is

the real owner of the vehicle, and hence, he alone is entitled to file a petition seeking for interim custody of the vehicle. When the vehicle is alleged to have involved in the alleged offences stated supra, as rightly pointed out by the Trial Court, the vehicle cannot be returned to the petitioner/third party, who is only the financier of the vehicle. I do not find any reason to interfere with the reasoned order passed by the Trial Court. The order of the Trial Court dated 04.10.2012 stands confirmed. This Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

paa

To

1. The Inspector of Police
Tiruppur North Police Station
Tiruppur.
2. The Judicial Magistrate No.I,
Tiruppur.
3. The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

Cr1.R.C. No. 1421 of 2012

VSN (CO)

PSI (26.08.2015)

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