

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-09-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 520 of 2009

V.Sathyannarayanan

.. Petitioner/Defecto Complainant

Versus

1.K.Anusuya

2.The Inspector of Police

G-3 Kilpauk Police Station (Crime)

Kilpauk

Chennai-600 010.

..Respondents/Accused & Complainant

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the judgment of acquittal passed by the learned II Metropolitan Magistrate, Egmore, in C.C.No.6091 of 2004 in Cr.No.495 of 2003, dated 11.11.2008.

For Petitioner : No Appearance

For Respondents : Mr.V.Arul,
Government Advocate (Crl.Side)
for R.2

ORDER

The case of the petitioner/defecto complainant is that he has paid a sum of Rs.3,00,000/- to the first respondent/accused believing the false representation made by her that after finishing the construction work of the building the premises at Kilpauk Garden would be let out to him, but, as promised by her, after completion of the construction work, the first respondent has neither handed over the said premises to the petitioner nor returned the money to him and hence, he had lodged a complaint. After investigation, a case was registered in Cr.No.495 of 2003 and the case was taken on file in C.C.No.6091 of 2004 on the file of the II Metropolitan Magistrate Court, Egmore, Chennai. After trial, the case put forth by the prosecution was not believed and the accused was acquitted of all the charges levelled against her. Aggrieved against the same, the complainant has filed the present Criminal Revision Case.

2.Today, when the matter is taken up, there is no representation for the petitioner. The Hon'ble Apex Court in the judgment reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, has culled out certain principles and in paragraph No.19 has held 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."

In the light of the principles culled out in the judgment of the Hon'ble Apex Court cited supra, it 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. In the light of the decision cited supra, as the case is pending from 2004 and the petitioner is successful in dragging on the case, the main Criminal Revision Case itself is taken up and disposed of on merits, after hearing the learned Government Advocate appearing for the second respondent and also after perusing the materials available on record.

3. Mr.V.Arul, learned Government Advocate appearing for the second respondent would contend that the Trial Court taking into consideration that the defacto complainant has not clearly proved as to why he has paid a sum of Rs.3,00,000/- to the accused and the manner in which he has paid the said amount has ultimately held that the prosecution has miserably failed to establish the guilt against the accused beyond reasonable doubt and acquitted the accused by giving benefit of doubt.

4. On a careful perusal and consideration of the entire evidence available on record and the judgment passed by the Trial Court, it is clear that, though, the sum of Rs.3,00,000/- alleged to have been paid by the defacto complainant to the accused was alleged to be the advance amount for letting out the premises to him for rent, the defacto complainant, who was examined as P.W.1, during his cross-examination has categorically admitted that there is no rental agreement and the rent was not fixed, therefore, the allegation that the amount of Rs.3,00,000/- was given as advance was rightly rejected by the Trial Court. Apart from that, it is seen that the petitioner/defacto complainant, who was examined as P.W.1, in his evidence has categorically admitted that for starting Cold Storage, he along with his family members and the accused and the husband of accused all went to Tuticorin and stayed at Deivasayalpuram for two

to three days. The defacto complainant has further averred in his evidence that Janani Cold Storage Systems Private Limited is started by him separately. But, on a perusal of the sworn statement filed by the defacto complainant before the Labour Court marked as Ex.D.2, he has averred that he along with the husband of accused have started the business in the name of "Janani Cold Storage Systems Private Limited" initially at Sivalingam Cross Street, Vetri Nagar, Devagi Ammal Street, thereafter, the place of business was shifted to No.12, Dharmaraja Koil Street, Kilpauk, Chennai-10 and thereafter, due to the unlawful activities committed by the husband of accused, the Company incurred huge loss, as a result of which, the Company was closed. This discrepancy has been rightly pointed out by the Trial Court below and acquitted the accused. In the present case, there is no evidence available on record to connect the accused to the offence complained of and the prosecution has miserably failed to establish the guilt against the accused beyond reasonable doubt. Therefore, I am of the view that the Appellate Court has rightly acquitted the accused by giving benefit of doubt. Hence, it has to be concluded that the prosecution has not proved the guilt against the first respondent/accused beyond reasonable doubt and therefore, the accused is entitled to benefit of doubt. Hence, I do not find any reason to interfere with the reasoned judgment of acquittal passed by the Trial Court, dated 11.11.2008. This Criminal Revision Case is dismissed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.The Inspector of Police
G-3 Kilpauk Police Station (Crime)
Kilpauk
Chennai-600 010.

2.The II Metropolitan Magistrate,
Egmore, Chennai

3.The Public Prosecutor
High Court, Madras

Cr1.R.C. No. 520 of 2009

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