

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.771 of 2009

K.S.Jayamoorthy @ Moorthy

.. Petitioner

vs

State of Tamil Nadu
rep.by its Deputy Superintendent of
Police, Gingee.

.. Respondent

Revision Petition filed under Sections 397 read with Sec. 401 of Cr.P.C. against the order dated 04.03.2009 passed by the learned Principal Sessions Judge, Villupuram in S.C.No.168 of 2007 and consequently to direct him to de novo record the evidences of PWs.1 to 3 after affording the opportunity of cross-examination available to the petitioner under the Evidence Act.

For Petitioner : No appearance

For Respondent : Mr.V.Arul
Government Advocate

ORDER

This revision is filed as against the order dated 04.03.2009 passed by the learned Principal Sessions Judge, Villupuram in S.C.No.168 of 2007 in disallowing the request made by the petitioner seeking to cross-examine the witnesses P.Ws.1 to 3 in the matter in the discharge petition filed by him.

2. The case of the petitioner in brief is as follows:

The petitioner stands charged for the offence under Section 427 IPC r/w 3(i) (x) of SC/ST (Prevention of Atrocities) Act. According to the petitioner, when the matter was called on 04.03.2009, there was a boycott by the Advocates and hence, the learned Judge was adjourning the matter. However, according to the petitioner, though the petitioner was present in Court on that day, in this particular matter, the learned Judge recorded the evidence of the witnesses on the prosecution side, viz., P.Ws.1 to 3. He would further contend that he was not apprised of the fact that he can cross-examine the witnesses even without an Advocate and the learned Judge without affording him opportunity, has voluntarily recorded that there was no cross-examination. He would also state that he was advised not to seek any relief under Section 311 of the Criminal Procedure Code or to file a petition seeking to recall the witnesses. Hence the present revision praying to set aside the evidence recorded on behalf of

P.Ws.1 to 3 on the ground that he was not given opportunity to cross examine the prosecution witnesses.

3. Learned Government Advocate (Criminal Side) would submit that the petitioner was very much available in the Court when the evidences of P.Ws.1 to 3 were recorded and he never stated that he want to cross-examine them. Further, on 30.03.2009, he surrendered before the learned Principal Sessions Judge, Villupuram as warrant was pending against him. However, when the learned Judge passed an order of remand, he ran away from the Court violating the said order. Hence, the Translator attached to the Court preferred a complaint before the jurisdictional police station and a case in Crime No.256 of 2009 under Section 224 IPC was also registered. He would further submit that instead of filing a petition under Section 311 of the Criminal Procedure Code, the petitioner has approached this Court by way of revision. Accordingly, he would pray for the dismissal of the revision petition.

4. Though the case has been listed on Saturday itself, i.e., [29.08.2015] mentioning that this case will be listed under the caption "old year cases" on Wednesday, i.e., on 02.09.2015, when the matter is taken up today, there is no representation for the petitioner and the the same is pending for the past six years. Hence, the Criminal Revision Case is taken up for disposal on merits as per the judgment of the Hon'ble Supreme Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka].

5. Heard the learned Government Advocate (Criminal side) appearing on behalf of the respondent and perused the records.

6. On a careful perusal of the order passed by the Court below, it is seen that the petitioner was very much available on the date of hearing, viz., on 04.03.2009 in the Court and when the evidences of P.Ws.1 to 3 were recorded. The reason stated by the petitioner that since there was a boycott, his Advocate could not cross-examine the witnesses, cannot be a reason for giving relief to the client. Though the petitioner was present in the Court on the day of taking evidence, he never sought permission of the Court to cross-examine the witnesses. Further the petitioner would state that he was advised not to file a petition under Section 311 Cr.P.C. Therefore, rightly the Court recorded that there was no cross examination. Further, the conduct of the petitioner has also to be taken note of. Here in this case, when the Court, as against the warrant issued, directed the remand of the petitioner, he ran away from the Court itself. Hence, the petitioner cannot have any grievance in the order passed by the Court below, when he has not even filed a petition seeking the appropriate relief.

7. For all the above stated reasons, I do not find any reason to interfere with the reasonable order passed by the Court below. Accordingly, this Criminal Revision Case is dismissed.

Vj2

Sd/-

Asst.Registrar (CS IV)

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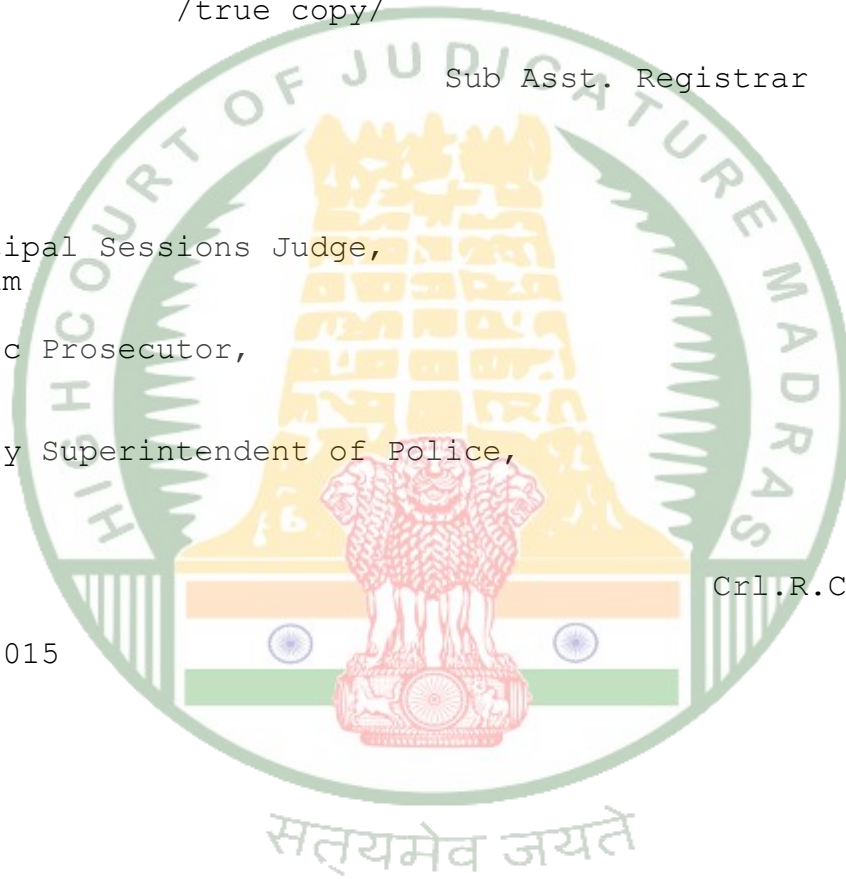
Sub Asst. Registrar

To

1. The Principal Sessions Judge,
Villupuram
2. The Public Prosecutor,
Madras
3. The Deputy Superintendent of Police,
Gingee

KU(CO)
sd : 05/10/2015

Crl.R.C.No.771 of 2009



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