

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.925 of 2010

N.S.Inbakumar

.. Petitioner/Accused

v.

The State represented by
Sub-Inspector of Police,
M1 Madhavaram Police Station
(Crime No.731/2005)
Madhavaram, Chennai

.. Respondent/Complainant

Revision Petition filed under Sections 397 read with Sec. 401 of Cr.P.C. to call for the records pertaining to the order of dismissed for default dated 04.06.2010 passed by the Hon'ble Principal District and Sessions Judge at Thiruvallur in C.A.No.42 of 2010 preferred against the judgment and order of conviction for an offence u/s.323 of IPC sentenced for fine amount of Rs.750/- in default 1 month simple imprisonment (Total fine amount is Rs.750/-) dated 22.03.2010 C.C.No.186 of 2009 passed by the learned Judicial Magistrate at Thiruvotriyur and set aside the same by allowing the Criminal Revision Petition.

For Petitioner : Mrs.V.Uma Shankari

For Respondent : Mr.V.Arul

Government Advocate (Crl. Side)

सत्यमेव जयते
ORDER

This revision is filed as against the order dated 04.06.2010 passed by the learned Principal District and Sessions Judge at Thiruvallur in C.A.No.42 of 2010 against the conviction and sentence ordered by the learned Judicial Magistrate at Thiruvotriyur dated 22.03.2010 in C.C.No.186 of 2009 for an offence u/s.323 of IPC and to pay a fine amount of Rs.750/- in default to undergo 1 month simple imprisonment.

2.The petitioner herein is the accused and the respondent is the complainant.

3.The petitioner herein as an appellant has filed Crl.A.No.42 of 2010 before the Lower Appellate Court under Section 374(3)(a) of Cr.P.C. against the judgment and order of conviction passed in C.C.No.186 of 2009 dated 22.03.2010 on the file of the learned Judicial Magistrate at Thiruvotriyur and he is convicted for an offence under Section 323 IPC and imposed to pay a fine amount of Rs.750/- in default to undergo one month simple imprisonment. When the appeal is posted for hearing on 04.06.2010, the same was dismissed for default for non appearance of the appellant, namely, the petitioner herein. Therefore, the petitioner has come forward with this revision.

4.The learned counsel for the petitioner submitted that the Lower Appellate Court, without giving an opportunity to the petitioner herein, has dismissed the appeal for default by order dated 04.06.2010, which is per se illegal and contrary to the judgment of the Hon'ble Supreme Court.

5.The learned Government Advocate (Crl. Side) appearing on behalf of the respondent would submit that since the order is not passed on merits, it is per se illegal.

6.I have perused the materials available on record.

7.On a perusal of the order passed by the Lower Appellate Court, it could be seen that though the petitioner-appellant appeared before the Lower Appellate Court below on earlier occasion, since he could not appear before the court on 04.06.2010, the Lower Appellate Court dismissed the appeal for default, which is not permissible in law and that too, without giving an opportunity to the petitioner to put forth his case.

8.As per the judgment of the Hon'ble Apex Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka], if the petitioner do not appear, there is no necessity for the Court, which is hearing the matter, to issue warrant for special notice or appoint any Amicus Curiae to argue the matter on behalf of the petitioner. The Court is empowered to deal with the matter on merits and dispose of the same and not on the ground of non prosecution.

9.But in the case on hand, the Lower Appellate Court, without going into the merits of the case, has dismissed the appeal only on the ground of non appearance of the appellant/petitioner, which is contrary to the proposition laid down by the Hon'ble Supreme Court in the case cited supra.

10.In view of the same, the order passed by the learned Principal District and Sessions Judge, Tiruvallur in Crl.A.No.42 of 2010 is set aside and the matter is remitted back to the Lower Appellate Court for fresh consideration. The learned Principal District and Sessions Judge, Tiruvallur shall decide the matter afresh, after providing

opportunities to both the parties and dispose of the same on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. It is made clear that the petitioner herein shall appear before the Lower Appellate Court in the next hearing date and shall continue to cooperate, failing which, the learned Principal District and Sessions Judge, Tiruvallur shall pass orders on merits as stated above.

11.In the result, the Criminal Revision Petition is allowed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

- 1.The Sub-Inspector of Police,
M1 Madhavaram Police Station
Madhavaram, Chennai
- 2.The Principal District and Sessions Judge
at Thiruvallur.
- 3.The Judicial Magistrate
at Thiruvotriyur
- 4.The Public Prosecutor,
High Court, Madras

+1 cc to Mr.V.Umashankari, Advocate sr.41084

सत्यमेव जयते

Cr1.R.C.No.925 of 2010

aa24/08/2015

WEB COPY