BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2015

CORAM:
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
Crl.R.C.(MD)No.96 of 2015
and
M.P.(MD)No.1 of 2015

Palaniappan : Petitioner/Respondent/Complainant

Vs.

Annamalai : Respondent/Appellant/Accused

PRAYER: Petition is filed under Section 397 of the Code of Criminal Procedure to set aside the order of remitted back C.A.No.40 of 2011, dated 09.06.2014, passed by the Sessions Judge, Sivagangai and direct the appellate Court to decide the appeal on merits.

For Petitioner : Mr.A.Haja Mohideen
For Respondent : Mr.R.Sundar Srinivasan

ORDER

The complainant in S.T.C.No.1332 of 2010, on the file of the learned Judicial Magistrate, Devakottai has come up with this Revision. The respondent is the accused in the case. The complainant filed the said case alleging that the respondent had committed offence punishable under Section 138 of Negotiable Instruments Act. The trial Court, by judgment dated 14.09.2011, found the respondent guilty under Section 138 of the Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for one year and also ordered for compensation of Rs.1,50,000/- to be paid by the respondent to the petitioner herein. Challenging the said conviction and sentence, the respondent filed C.A.No.40 of 2011 before the learned Sessions Judge, Sivagangai. During the said appeal, the respondent filed two Miscellaneous Petitions in Crl.M.P.NO.61 of 2014 and Crl.M.P.NO.62 of 2014. Crl.M.P.NO.61 of 2014 was filed to send for the PAN card and income-tax returns of the petitioner herein for the year 2008-2009, 2009-2010, 2010-2011. Requesting the Court to receive the said documents for evidence, the respondent filed Crl.M.P.No.62 of 2014. During the course of proceedings before the lower Appellate Court, those two criminal miscellaneous petitions were also heard along with the appeal. Finally, by judgment dated 09.07.2014, the lower Appellate Court acquitted the respondent and remanded the case to the file of the trial Court along with Crl.M.P.No.61 of 2014 and Crl.M.P.No.62 of 2014 for a decision to be taken by the learned Magistrate, after affording sufficient opportunity to the parties. The said remand order is under challenge in this Revision, at the instance of the petitioner herein.

2.I have heard the learned Counsel appearing on either side and also perused the records carefully.

3.A perusal of the judgment of the lower Appellate Court would go to show that the lower Appellate Court did not take any decision in Crl.M.P.No.61 of 2014 and Crl.M.P.No.62 of 2014 as required under Section 391 of the Criminal Procedure Code. It is for the appellate Court to decide such request for additional evidence and in the event, the Court, by recording its reasons, allow the said petition to receive the additional evidence, then, the Sessions Judge may direct the trial Court to record evidence or the appellate Court itself may record the additional evidence. Thereafter, the appellate Court shall decide the appeal based on all the evidences including additional evidence received. But in this case, unfortunately, the lower Appellate Court has not passed any order on these two miscellaneous petitions as required under Section 391 of the Criminal Procedure Code and instead, the lower Appellate Court has simply remanded the case to the trial Court by setting aside the conviction and sentence and has also sent those two miscellaneous petitions to the trial Court for decision. This, in my considered opinion, is illegal.

4. The learned Counsel for the petitioner submitted that even before the trial Court, the petitioner took the plea that he was not an income-tax assessee and therefore he is not in possession of PAN card and income-tax returns. Having perused the same, the learned Counsel for the respondent across the bar, today submitted that in such case, Crl.M.P.Nos.61 and 62 of 2014 may be dismissed and the lower Appellate Court may be directed to dispose of the appeal on merits on considering the evidence available on records.

5. The learned Counsel for the petitioner would also submit that the lower Appellate Court has remanded the case back without assigning any reason.

6. In my considered opinion as pointed out earlier, the lower Appellate Court was not right in simply remanded the case to the trial Court along with Crl.M.P.No.61 of 2014 and Crl.M.P.No.62 of 2014. Since the learned Counsel for the respondent states that Crl.M.P.No.61 of 2014 and Crl.M.P.No.62 of 2014 may be dismissed, as the petitioner has taken a stand that he is not an income-tax assessee, I am inclined to dismiss those two petitions. Apart from that, a perusal of the judgment of the lower Appellate Court

would go to show that the lower Appellate Court has not considered the grounds of appeal and disposed of the appeal on merits. Therefore, the entire order of the lower Appellate Court deserves to be set aside.

7. In the result, the Criminal Revision Case is allowed and the impugned order of the learned Sessions Judge, Sivagangai is set aside. Crl.M.P.No.61 of 2014 and Crl.M.P.No.62 of 2014 shall stand dismissed and C.A.No.40 of 2011 is remanded back to the file of the learned Sessions Judge, Sivagangai, who shall dispose of the said appeal in accordance with law, after affording sufficient opportunities to both parties. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1.THE SESSIONS COURT, SIVAGANGAI
2.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS AHIGHA COURT, MADURAI
3.THE JUDICIAL MAGISTRATE, DEVAKOTTAI
+1cc to MR.A.Haja Mohideen, Advocate Sr.No.30409
ssl
AA/24.06.2015/ 3p- 5c/

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