

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2016

(Orders Reserved on : 22.07.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.302 of 2009

and

M.P.No.1 of 2009

1. Priya Jain
2. Sandeep Jain
3. Lalit Jain

... Petitioners/Accused

Vs.

Desraj Bajaj
S/o. Balliram
Partner M/s.Sham Exib Corporation,
Flat No.1,
315, Kalaipillai Thoppu,
Near S.K.S. Hospital,
Salem - 636 004.
Rep. by his power of Attorney
Anil Bajaj

... Respondent/Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w.401 of the Code of Criminal Procedure, praying to call for the entire records in respect of Crl.R.C.No.14 of 2008 on the file of Additional District Judge, Fast Track Court No.1, Salem, dated 20.01.2009 and set aside the same which was preferred as against the order in C.C.No.246 of 2002 on the file of Judicial Magistrate No.V, Salem, dated 02.11.2007.

For Petitioners: Mr.D.Rajagopal

For Respondent : No Appearance

ORDER

This Criminal Revision Case is preferred by the petitioners praying to call for the entire records in respect of Crl.R.C.No.14 of 2008 on the file of the learned Additional District Judge, Fast Track Court No.1, Salem, dated 20.01.2009 and set aside the same which was preferred as against the order passed by the learned Judicial Magistrate No.V, Salem, dated 02.11.2007, in C.C.No.246 of 2002.

2. The learned counsel for the petitioners/accused would mainly contend that the learned First Appellate Judge viz., Additional District Judge, Fast Track Court No.1, Salem, without following the proper provision of law and also without considering the facts and circumstances of the case, erroneously allowed the CrI.R.C.No.14 of 2008, which was preferred by the respondent/complainant as against the order passed by the learned Judicial Magistrate No.V, Salem, in C.C.No.246 of 2002, on 02.11.2007, acquitting the accused on the ground that the complainant was absent and no representation on behalf of the complainant. It is further contended that the First Appellate Court has not at all considered the fact that the complainant was continuously absent and he is dragged on the case for about 6 years and upon considering all these aspects only, the learned trial Judge/Judicial Magistrate No.V, Salem, correctly passed an order acquitting the revision petitioners/accused and hence, the order passed by the First Appellate Court/Additional District Judge, Fast Track Court No.1, Salem, has to be set aside and the criminal revision case has to be allowed.

3. In support of his contentions, the learned counsel for the petitioners has relied on a decision of the Hon'ble Supreme Court reported in 2013 (2) MWN (Cr.) 308 (SC) [Subhash Chand Vs. State (Delhi Administration)].

4. Even though notice was served on the respondent and his name is also printed in the cause list, he has not chosen to appear either in person or through counsel.

5. This Court has considered the submissions made by the learned counsel for the petitioners and perused the entire records.

6. The order passed by the learned Judicial Magistrate No.V, Salem, in C.C.No.246 of 2002 reads as follows:-

"Complainant called absent. There is no representation for the complainant. CW1 examined. Accused absent u/s.205 Cr.P.C. and dispensed herewith. Accused counsel present. Case is pending for complainant side evidence. Last hearing also complainant absent. No representation. Since complainant is absent complaint is dismissed. Accused is acquitted."

7. On a perusal of the above said order of the trial Court, the sworn statement or the evidence adduced on the side of the complainant is not there. The trial Court, without application of mind, erroneously passed an order acquitting the accused, since the complainant was absent. The trial Court has to follow

the procedure as per Section 200 to 204 of Cr.P.C. But, without appreciating the above fact, the trial Court, simply dismissed the complaint preferred by the complainant and acquitted the accused and there is no basis or reason stated for acquitting the accused. Further, in the order, the learned trial judge has not clearly stated about the provision of law. The order passed by the trial Court is very vague and hence, the order of the trial Court is not maintainable in law and the same is liable to be set aside. Further, in this case, the respondent herein/complainant has preferred a criminal revision case in CrI.R.C.No.14 of 2008 before the learned Additional District Judge, Fast Track Court No.I, Salem, and the learned Additional District Judge, after considering the provision of law and also after considering the entire facts and circumstances of the case, found that the order of the trial Court is not sustainable and hence, set aside the order of the trial Court passed in C.C.No.246 of 2002 and directed the trial Court to conduct the trial from the first week of February 2009 onwards. Further, the citation relied on by the learned counsel for the petitioners is not applicable to the facts of the present case.

8. Considering the above facts and circumstances of the case, this Court is of the considered view that there is no infirmity or illegality in the order passed by the First Appellate Court. This Court finds no reason to interfere with the order dated 20.01.2009 passed by the First Appellate Court/Additional District Judge, Fast Track Court No.1, Salem, in CrI.R.C.No.14 of 2008, which do not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed.

9. In the result, this Criminal Revision Case is dismissed with a direction to the learned Judicial Magistrate No.V, Salem, to post the main case in C.C.No.246 of 2002 on day-to-day basis and to dispose the same, within a period of four weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

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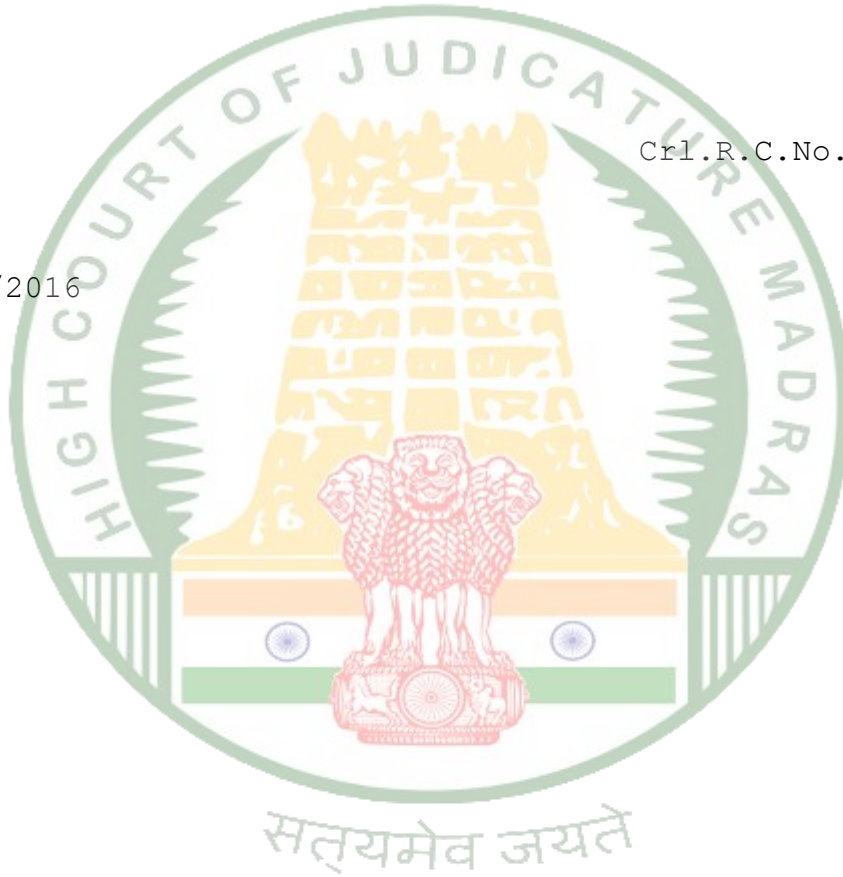
Sub Assistant Registrar

To

1. The Additional District Judge,
Fast Track Court No.1, Salem.
2. The Judicial Magistrate No.V,
Salem.
- 3.-Do- Thro The Chief Judicial Magistrate,
Salem.

Crl.R.C.No.302 of 2009

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