

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.29 of 2016
and
Crl.M.P.Nos.188 & 189 of 2016

P.Mani
S/o.Perumal

... Petitioner

vs.

State represented by
The Sub-Inspector of Police,
H-4 Korrukupet Police Station,
Chennai - 600 021.

... Respondent

Criminal Revision filed under section 397 & 401 of the Code of Criminal Procedure, against the judgment of learned XVI Additional Judge, Chennai, passed in C.A.No.210 of 2014 on 16.07.2015 dismissing the appeal for default and thereby confirming the judgment of learned XV Metropolitan Magistrate, George Town, Chennai, passed in C.C.No.2249 of 2010 on 02.08.2014.

For Petitioner : Dr.G.Krishnamurthy

For Respondent : Mr.C.Iyyapparaj
Government Advocate (Crl.side)

O R D E R

In law, the matter would have to be remitted to the appellate Court inasmuch as the appeal of the petitioner stands dismissed for default. A Criminal appeal cannot be so dismissed. This Court, however, taking into consideration the submission of learned counsel for petitioner, is inclined to dispose of this revision on merits.

2. This revision is preferred against the judgment of learned XVI Additional Judge, Chennai, passed in C.A.No.210 of 2014 on 16.07.2015 dismissing the appeal for default.

3. Petitioner faced trial for offences u/s.341, 325 and 506 (ii) IPC in C.C.No.2249 of 2010 on the file of learned XV Metropolitan Magistrate, George Town, Chennai. In brief, the prosecution case is that on 19.03.2010 at about 10.30 p.m. the

petitioner/accused obstructed the de facto complainant, abused him using filthy language as also assaulted him, owing to which the de facto complainant had lost his tooth and suffered injuries. The further allegation is that the petitioner/accused threatened the de facto complainant of doing away with his family, if he informed the incident to police.

4. Before the trial Court, the prosecution examined eight witnesses and marked six exhibits. None were examined on behalf of the defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 02.08.2014, convicted petitioner/accused for offences u/s.341, 325 and 506(ii) IPC and sentenced him to 1 month S.I. for offence u/s.341 IPC, 3 months S.I. for offence u/s.325 IPC and 3 months S.I. for offence u/s.506(ii) IPC. The trial Court imposed fine of Rs.5,000/- payable to the de facto complainant as compensation in keeping with section 357 Cr.P.C. The trial Court directed that sentences run concurrently. There against, petitioner moved C.A.No.210 of 2014 on the file of learned XVI Additional Judge, Chennai, which came to be dismissed for default under judgment dated 16.07.2015. Hence, this revision.

5. Though learned counsel for petitioner initially contended that there are merits in the defence case, he eventually restricted himself to the question of sentence. Learned counsel submitted that subsequent to the judgment of appellate Court, petitioner has been taken into custody on 22.12.2015 and presently, he is confined at Central Prison, Puzhal. Submitting that petitioner is now aged 45 years and has been in custody since 22.12.2015, learned counsel prays this Court to show leniency on the question of sentence.

6. Heard learned Government Advocate [Crl.side] on the above submissions.

7. On perusal of the papers, this Court finds no error in the judgment of conviction arrived at by trial Court. However, considering the fact that the occurrence was of the year 2010, that petitioner is now aged 45 and the submissions of learned counsel for petitioner that the petitioner has been in custody since 22.12.2015 and has paid the fine amount imposed by the trial Court, this Court modifies the sentence as follows:

"the sentence of imprisonment against petitioner shall be treated as already undergone. Fine of Rs.5,000/- imposed by trial Court is confirmed."

This Criminal Revision is disposed of with the above modification. Petitioner shall be released forthwith, unless his custody is required in connection with any other case. Consequently, connected miscellaneous petitions are closed.

gm

s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1. The XVI Additional Judge,
Chennai.
 2. The XV Metropolitan Magistrate,
George Town, Chennai.
 3. The Superintendent of Central Prison,
Chennai.
 4. The Sub-Inspector of Police,
H-4 Korrukupet Police Station,
Chennai - 600 021.
 5. The Public Prosecutor,
High Court, Madras.
- + 1 cc to M/s.Dr.G.Krishnamurthy, Advocate SR 1335

mp(co)
prk8/1

Crl.R.C.No.29 of 2016

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