



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.L.RC(MD) No.190 of 2016

and CrI.M.P.(MD) No.2672 of 2016

Kalaiselvi

...Petitioner/Appellant

-vs-

Sivasubramanian

...Respondent/Complainant

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for the records pertaining to order passed by the learned 1st Additional District and Sessions Judge, Tirunelveli in CrI.A.No.7 of 2015 dated 01.12.2015 against S.T.C. No.2880 of 2007 dated 18.12.2014 on the file of the Judicial Magistrate Court No.IV, Tirunelveli and set aside the same.

For Petitioner: Mr.M.Ramu

For Respondent: Mr.S.P.Maharajan

O R D E R

Now the short and simple question is whether like a suit or appeal suit, a criminal appeal could be dismissed for default.

2.In this respect a civil case is different from a criminal case. In Civil Law, exparte disposal, dismissal for default is well known. But it is unknown in criminal law. Under the Criminal procedure, there is no exparte disposal, exparte conviction, exparte sentence. An accused cannot be punished without a hearing.

3.As per Article 22(1) of the Constitution of India, a person accused of a crime is entitled to be defended by a lawyer of his choice. It is a fundamental right. It is a constitutional right. It is a basic human right. In the absence of counsel for the accused conducting trial and punishing the accused is against law. It is not fair trial.

4.In the absence of a lawyer, if criminal proceedings are conducted, it is like conducting trial with deaf and dumb person. It flows from Article 22(1) of the Constitution of India. This has also been reiterated in Section 303 Cr.P.C. Such right to be defended by lawyer cannot be taken away/curtailed. It is the bounden duty of a Court to ensure availability of proper legal assistance to the accused. It also arises from Article 39-A Constitution of India. This has also been reiterated in Section 304 Cr.P.C. Such right is not only available in the original/trial Court but also in the appellate and revisional Courts as

well as in this Court, otherwise it would not be a fair trial.

5. In a democratic country, one of the basis of personal freedom is having legal assistance. Equally if a person appeals against his conviction, the said principles applies to the appeal proceedings. There is no disposal/dismissal of a criminal appeal for default. There cannot be an exparte judgment under criminal law. If an appeal is dismissed for default, it will result in conviction and the sentence get confirmed. However, it is without an hearing. It is against Article 22(1) of the Constitution of India and Sections 303 and 304 I.P.C.

6. Sometimes an appellant may fails to appear and prolongs the Criminal Appeal. Even then such absconding appellant must be given legal assistance through a lawyer. After that if the appeal is dismissed or allowed that is a different matter. In such circumstances, the Court has to engage some lawyer to represent the absentee appellant. The Court can appoint a legal aid counsel or lawyer as amicus curiae. Only after hearing on merits a conviction can be confirmed. It also equally applies to appeals filed as against order of acquittal.

7. In this case originally the accused was convicted in S.T.C.No.2880 of 2007 under 138 of N.I. Act by the learned Judicial Magistrate No.IV, Tirunelveli. Thereafter, he filed Criminal Appeal No.7 of 2015 which was pending before the learned I Additional Sessions Judge, Tirunelveli. On 01.12.2015, the learned appellate Judge passed the following order:

"This Criminal Appeal has been filed against the judgment of the Judicial Magistrate Court No.4, Tirunelveli in S.T.C.No.2880 of 2007 dated 18.12.2014.

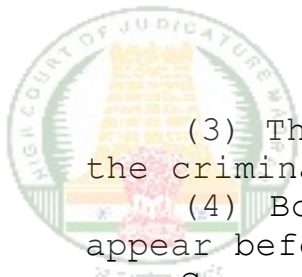
Appellant / Accused not present. Counsel for the accused not present. But counsel for Respondent present. Ready for Arguments. Further, this appellant side has not filed any fresh surety contemplated u/s 437(A) Cr.P.C. Sufficient time granted. Since no representation by counsel for the accused this criminal appeal is dismissed for default. Directed the lower court to execute the lower court judgment against the appellant/accused."

8. It is seen that the learned Judge has dismissed the appeal for default. It means the conviction and sentence are confirmed without a hearing. It is not a merit disposal. A suit can be dismissed for default. But not a criminal appeal. So, the impugned judgment passed by the learned I Additional Sessions Judge is vitiated.

9. Ordered as under:

(1) Revision is allowed.

(2) The impugned order passed by the 1st Additional Sessions Judge, Tirunelveli dated 01.12.2015 in CrI.A.No.7 of 2015 is set aside..



(3) The 1st Additional Sessions Judge, Tirunelveli will restore the criminal appeal.

(4) Both side counsels on record in the appellate Court will appear before the said Court on 06.07.2016.

Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To:

1.The 1st Additional Sessions Judge,
Tirunelveli.

2.The Judicial Magistrate No.IV,
Tirunelveli.

3.The Government Advocate (Criminal Side)
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.M.Ramu, Advocate in SR.30037

+1cc to M/s.P.Maharajan, Advocate in SR.30576

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sj

PBK/PEK 21/06/2016 ::3P-6C::