

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2017

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THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.No.554 of 2017
and
Crl.M.P.No.4923 of 2017

Ambedkumar Petitioner/Accused

vs

State by
The Inspector of Police,
All Women Police Station,
Malemaruvathur,
Kancheepuram District.
(Crime No.14 of 2003)Respondent/Complainant

Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the judgment dated 02.03.2017 made in C.A.No.2 of 2014 on the file of the Principal District and Sessions Court, Kancheepuram at Chengalpattu, confirming the conviction and the sentence imposed on the Judgment dated 07.02.2014 made in C.C.No.64 of 2004 on the file of the learned Judicial Magistrate, Madurantakam, Kancheepuram District.

For Petitioner : Mr.P.M.Duraiswamy

For Respondents: Mr.R.Ravichandran
Government Advocate (Crl. Side)

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O R D E R

The sole accused, in C.C.No.64 of 2004, on the file of the learned Judicial Magistrate, Madurantakam, is the petitioner herein. He stood charged for the offence under Sections 494 and 498-A IPC. The trial Court, after trial, convicted the petitioner under Section 494 IPC and sentenced him to undergo two years rigorous imprisonment and imposed a fine of Rs.5,000/- in default to undergo three months rigorous imprisonment and convicted him under Section 498-A IPC and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months rigorous imprisonment. Challenging the above said conviction and

sentence, the petitioner has filed an appeal in C.A.No.2 of 2014 on the file of the Principal District and Sessions Court, Kancheepuram at Chengalpattu. The appeal was admitted and notice was ordered on 07.03.2014. Subsequently, the matter was posted for hearing on 02.03.2017, on that day since there is no representation for the appellant, the lower appellate Court dismissed the appeal for non prosecution. Challenging the above said order of dismissal, the present criminal revision case has been filed.

2. Mr.P.M.Duraiswamy, the learned counsel appearing for the petitioner would submit that even in the absence of the appellant, the lower appellate Court cannot dismiss the appeal for non prosecution. Under section 384 Cr.P.C. the Court must necessarily considered the appeal on merits and can not dismissed the appeal on the ground of non prosecution. In support of his contention, the learned counsel appearing for the petitioner relied upon a Judgment of the Hon'ble Supreme Court in KISHAN SINGH Vs. STATE OF U.P reported in 1996 (9) SCC 372 and another judgment in PARASURAM PATEL AND ANOTHER Vs. STATE OF ORISSA reported in 1994 (4) SCC 664 and also another Judgment in K.S.PANDURANGA Vs. STATE OF KARNATAKA reported in 2013 (3) SCC 721.

3. The learned Government Advocate(Crl. Side) appearing for the respondent fairly conceded the above position of law.

4. I have considered the rival submissions.

5. Section 384 Cr.P.C. provides for summary dismissal of the appeal and the same reads as follows:-

"384 Summary dismissal of appeal-(1) If upon examining the petition of appeal and copy of the judgment received under Section 382 or Section 383, the appellate Court considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily;

Provided that:-

(a) no appeal presented under Section 382 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same;

(b) no appeal presented under Section 383 shall be dismissed except after giving the appellant a reasonable opportunity of being heard in support of the same, unless the appellate Court considers that the appeal is frivolous or that the production of the accused in custody before the Court would involve such inconvenience as would be disproportionate in the circumstances of the case;

(c) no appeal presented under Section 383 shall be dismissed summarily until the period allowed for preferring such appeal has expired.

From the above, it is clear that it is the duty of the appellate court to examine the petition of appeal and the judgment under challenge and to consider the appeal on merits before dismissing an appeal, even in the absence of the appellant and his counsel.

6. The Hon'ble Supreme Court Judgment in KISHAN SINGH Vs. STATE OF U.P reported in 1996 (9) SCC 372, has held as follows:-

"It will be seen that the very opening words of the section require the appellate Court to examine the petition of appeal and copy of the impugned judgment in considering whether there is any sufficient ground for interfering with the same Sub Section (2) provides that the Court may call for the records of the case even at the preliminary stage. It is, thus clear, that the duty of the appellate Court to examine the petition of appeal and the judgment under challenge and to consider the merits of the case before dismissing the appeal summarily is not dependent on the appellant or his counsel appearing before the Court to press the appeal. As soon as a petition of appeal is presented under Section 382 or 383 it becomes the duty of the appellate Court to consider the same on merits, even in the absence of the appellant and his counsel before dismissing same summarily."

The another Judgment of the Hon'ble Supreme Court in KISHAN SINGH Vs. STATE OF U.P reported in 1996 (9) SCC 372, has held as follows:-

"Special Leave granted. In the presence case, the High Court dismissed the criminal appeal of the appellants only on the ground that there was default in appearance of the appellants and their counsel. It is now well settled that no criminal appeal can be dismissed on the ground of default in appearance. The Court has to go through the record of the case even in the absence of the appellants or their counsel and decide the matter on merits."

7. In view of the above settled law, the order of the lower appellate Court dismissing the appeal for non prosecution is totally illegal. Hence, it is liable to be set aside.

8. In the result, the Criminal Revision Case is allowed. The judgment of the lower appellate Court is hereby set aside and the matter is remanded back to the lower appellate Court and the lower appellate Court is directed to consider the same on merits and in accordance with law and dispose of the same after giving an opportunity of hearing to the petitioner herein and dispose of the appeal preferably within a period of six months from the date of receipt of a copy of this order. It is open to the petitioner to file a petition for suspension of sentence before the lower appellate Court and seek suspension of sentence pending appeal. Consequently, connected M.P. is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1.The Principal District and Sessions Judge,
Kancheepuram at Chengalpattu.

2.The Judicial Magistrate Court,
Madurantakam, Kanchipuram District.

3.The Inspector of Police,
All Women Police Station,
Malemaruvathur,
Kancheepuram District.

4.The Public Prosecutor,
High Court, Madras-104.

+1 cc to Mr.P.M.Duraiswamy,advocate,sr.20742.

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Crl.R.C.No.554 of 2017

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