

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.07.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

CRL.R.C.No.572 of 2017

1.M/s.Vanitha Traders,
Rep.by its Partner, K.Kumar

2. K.Kumar ...Petitioners/Accused

- Vs -

M/s.Casper Exports,
Rep.by its Partner,
R.Udayakumar
S.F.No.135/5, Jeeva Nagar,
Murugampalayam Road,
Iduvampalayam Post,
Tirupur-641 687.

..Respondent/Complainant

Prayer : This Revision is filed under Section 397 & 401 of Cr.P.C. against the judgment dated 07.03.2017 made in C.A.No.2/2017 on the file of the learned II Additional District and Sessions Judge, Tirupur, confirming the judgment of the trial court dated 30.11.2016 made in C.C.No.413 of 2014 on the file of the learned Judicial Magistrate No.II, Tirupur.

For Petitioners : Mr.P.M.Duraiswamy

For Respondent : No Appearance

O R D E R

This revision has been filed against the judgment dated 07.03.2017 made in C.A.No.2 of 2017 on the file of the II Additional District and Sessions Court, Tiruppur.

2. Under the said order of the Court below, which is impugned herein, the learned Judge has dismissed the appeal in C.A.No.2 of 2017, filed by the petitioner herein, as against the judgment and conviction made in C.C.No.413 of 2014 on the file

of the learned Judicial Magistrate-II, Tiruppur, dated 30.11.2016.

3. It seems that the appeal C.A.No.2 of 2017 came to be heard on 18.01.2017, thereafter by further hearing on 20.02.2017. Records seems to have been called for and thereafter it was posted for hearing on 07.03.2017.

4. On the said date i.e., on 07.03.2017, as per the records, the appellant/petitioner herein was not present and therefore he was called absent and an exparte order was passed on the very same day by the first appellate court, by thus through the impugned order the said appeal was dismissed for non-prosecution.

5. Mr.P.M.Duraiswamy, learned counsel appearing for the petitioner has relied upon a recent order passed by this Court in CrI.R.C.No.554 of 2017 by order dated 06.04.2017 in the matter of Ambedkumar v. State, by the Inspector of Police, All Women Police Station, Malemaruvathur, Kancheepuram District.

6. In the said cited judgment, a similar situation was considered by this Court where also, an appeal filed against the conviction was dismissed for non-prosecution or for the appellant/counsel absence on the said date.

7. Considering the said aspect, the learned Judge, after having taken note of the law made in this regard, by the Hon'ble Apex Court, in atleast two judgments, and after considering Section 384 of Cr.P.C., has made the following observation at para 2 to 7 of the judgment which are extracted hereunder for better appreciation of the issue.

'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 PATELL 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 (CrI. 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. After having considering the said aspect, in the light of the above settled law by the Hon'ble Apex Court, the learned Judge has allowed the said revision in CrI.R.C.No.554 of 2017 and remanded the matter back to the first appellate court for consideration.

9. Herein the case on hand also, exactly a similar situation has arisen where we are confronting with the impugned judgment of the appellate court made in C.A.No.2 of 2017 by order dated 07.03.2017.

10. Even if the counsel for the appellant absent, it is for the Court to proceed with the matter and render a decision on merits.

11. In view of language used under Section 384 of Cr.P.C., the summary disposal of dismissing the appeal without going into the merits of the case is not justifiable one and therefore, in this regard, I am in complete agreement with my learned brother.

12. In view of the aforesaid facts and circumstances, this Court is inclined to entertain the present revision. Accordingly, the following order is passed:

This Criminal Revision is allowed and the judgment of the lower appellate court is set aside and the issue is remitted back to the lower appellate court for reconsideration. The lower appellate court is also directed to decide the appeal, on merits and in accordance with law and dispose of the same as early as possible.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssn/mfa

To

1. The II Additional District and Sessions Judge,
Tirupur.

2. The Judicial Magistrate No.II,
Tirupur.

+1 cc to Mr.P.M.Duraiswamy Advocate sr 47777

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