

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.704 of 2011

and

M.P.No.1 of 2011

1. M/s.Sarvotham & Company
Chartered Accountant,
M.Sarvotham.

2. M.Sarvotham ... Petitioners/Accused 1 & 2

Vs

G.Suresh ... Respondent/Complainant

Prayer:-

This Criminal Revision is filed under Section 397 & 401 of Cr.P.C., to set aside the order passed by the Additional District and Sessions Judge, Fast Track Court No.III, Chennai in C.A.No.265 of 2004 dated 09.04.2011.

For petitioner : Mr. Prakash Goklaney
For respondent : Mr. S.Kalyanaraman,
Legal Aid Counsel

ORDER

Challenging the order of dismissal passed by the learned Additional District and Sessions Judge, Fast Track Court No.III, Chennai, in C.A.No.265 of 2004 dated 09.04.2011, the present revision has been filed.

2. The respondent herein has filed a private complaint against the petitioner herein under Section 138 of N.I. Act in C.C.No.1705 of 2000, on the file of the IX Metropolitan Magistrate, Egmore Chennai. The trial Court, convicted the first petitioner and imposed a fine of Rs.5000/-, in default, to undergo simple imprisonment for 3 months, and convicted the second petitioner and sentenced him to undergo rigorous

imprisonment for one year and imposed a fine of Rs.5000/-, in default, to undergo simple imprisonment for 3 months. Challenging the above said conviction and sentence, the petitioners filed an appeal in C.A.No.265 of 2004 on the file of the Additional District and Sessions Judge, Fast Track Court No.III, Chennai . The lower appellate court dismissed the above appeal on the ground that even though the appeal has been pending from 2004 , the counsel for the appellant was not ready for arguments. Challenging the above said order, the present revision has been filed.

4. Mr.Prakash Goklaney, the learned counsel appearing for the petitioner would submit that he was ready to argue the case, but since an application filed by him under Section 391 Cr.P.C. was pending, he requested the lower-appellate court to consider the application. But, the lower appellate court without considering the same, dismissed the appeal. He would further submit that even if the counsel was not ready to argue, the court cannot dismiss the appeal summarily, under law and either the court can appoint a legal aid counsel and proceed the case or consider the record and pass a judgment on merits. At any rate, the lower-appellate court can not dismissed the appeal, for non-appearance of the appellant.

5. Mr. S.Kalyanaraman, learned counsel appearing for the respondent fairly admitted the same.

6. I have considered the rival submissions and perused the materials available on record.

7. It is the settled position of law that Section 385 and 386 Cr.P.C., does not contemplate a dismissal of an Appeal for non-prosecution and the Appellate court can only dispose the appeal on merits, considering the evidence on record.

8. In a case reported in (1996) 4 Supreme Court Cases 720 (Bani Singh and others /vs/ State of U.P.), it has been held as follows:-

"We have carefully considered the view expressed in the said two decisions of this Court and we may state that the view taken in Shyam Deo Case appears to be sound except for a minor clarification which we consider necessary to mention. The plain language of Section 385 makes it clear that if the appellate court does not consider the appeal fit for summary dismissal, it 'must' call for the record and section 386 mandates that after the record is received, the appellate court may dispose of the appeal after hearing the accused or his

counsel. Therefore, the plain language of Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution simpliciter. On the contrary, the code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly expects the appellate court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record. Therefore, with respect, we find it difficult to agree with the suggestion in Ram Naresh Yadav case that if the appellant or his pleader is not present, the proper course would be to dismiss an appeal for non-prosecution.

9. In the above circumstances, the judgment of the lower-appellate court is liable to be set-aside.

10. Accordingly, this Criminal Revision Case is allowed and the Judgment passed by the Additional District and Sessions Judge, Fast Track Court No.III, Chennai in C.A.No.265 of 2004 dated 09.04.2011 is hereby set aside and the matter is remanded back to the lower Appellate Court and the lower-Appellate Court is directed to restore the appeal on file and decide the appeal on merits after hearing the petitioner as well as the respondent. Since the Appeal is of the year 2004, the lower appellate court is directed to dispose of the appeal within a period of 6 months from the date of the receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

11. While parting with the case, I appreciate the services rendered by Mr.S.Kalyanaraman, learned counsel, who appeared on behalf of the respondent as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

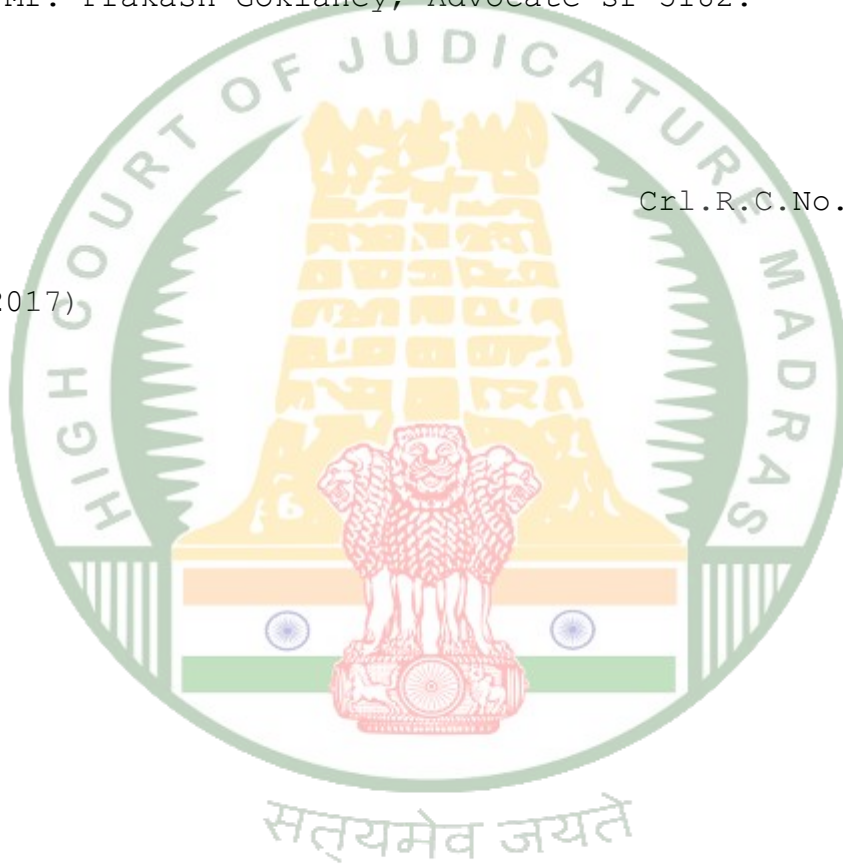
mrp

To

1. The Additional District and Sessions Judge,
Fast Track Court No.III,
Chennai.
 2. The IX Metropolitan Magistrate, Saidapet
Chennai 15.
 3. The Section Officer
Criminal Section, High Court, Madras 104.
- +2 Ccs to Mr. Prakash Goklaney, Advocate sr 5182.

Cr1.R.C.No.704 of 2011

KGK(CO)
SP(04/12/2017)



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