



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.04.2017
CORAM:

THE HONOURABLE MR. JUSTICE A.M.BASHEER AHAMED

WEB COPY

Crl.R.C.(MD)No.291 of 2017

Gavaskar

... Petitioner

Vs.

State Rep.by
The Sub Inspector of Police,
Gudalur North Police Station,
Gudalur, Theni District.

... Respondent

PRAYER: The Criminal Revision Case is filed under Sections 397 & 401 Cr.P.C., to set aside the judgment passed in C.A.No.15 of 2015 on the file of the Additional District cum Sessions Judge, Periyakulam dated 05.11.2015 confirming the judgment dated 23.06.2015 in C.C.No.89 of 2009 passed by the Judicial Magistrate, Uthamapalayam and quash the same.

For Petitioner	: Mr.K.Guhan
For Respondent	: Mr.P.Kannithevan, G.A.(Crl.side)

O R D E R

This Criminal Revision Case is filed to set aside the judgment dated 05.11.2015 passed in C.A.No.15 of 2015 by the Additional District cum Sessions Judge, Periyakulam, confirming the judgment dated 23.06.2015 in C.C.No.89 of 2009 passed by the Judicial Magistrate, Uthamapalayam.

2.The learned counsel appearing for the petitioner is present. Mr.P.Kannithevan, learned Government Advocate (Crl.side) takes notice for the respondent.

3.Heard both sides.

4.Totally there are 3 accused in C.C.No.89 of 2009. A2 & A3 were acquitted and A1 was convicted to undergo 2 years R.I. and imposed Rs.5000/- as fine in default, to undergo one month S.I. For the offence punishable under Section 326 IPC as per the judgment dated 23.06.2015. Aggrieved by that order, A1 preferred an appeal in C.A.No.15 of 2015 before the Additional District cum Sessions Court, Periyakulam and the said Criminal Appeal was allowed on 05.11.2015 for default due to non appearance on behalf of the appellant and also there was no representation for



the appellant's side at the time of hearing. As against the said dismissal order, A1 in this case has preferred the present Criminal Revision case before this Court to set aside the above said judgment passed in C.A.No.15 of 2015.

5. The learned counsel for the petitioner submitted that the appeal was disposed of in the absence of the appellant as well as his counsel before the Appellate Court. The merits of the appeal should not be decided by the concerned Appellate Court. The learned counsel for the petitioner further relied on various decisions of the Honble Supreme Court in **1994(4) SCC 664 (Parasuram Patel and another Vs. State of Orissa)** and **2011 (2) Supreme 265 (Md.Sukur Ali Vs. State of Assam)** and **2016 Supreme 2560 (Selvam Vs. Karpagam)** of this Court.

6. The Hon'ble Apex Court has held that no criminal appeal can be dismissed on the ground of default in appearance and 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 merit. It is further held that because of the negligence of deliberate absence on the part of the counsel, the Court should not decide the Criminal case against the accused since an accused in a criminal case should not suffer for the fault of his counsel and in such a situation, the Court should appoint another counsel as amicus curiae to defend the accused.

7. The learned Government Advocate (Crl.side) appearing for the respondent submitted that he has no objection to remand the matter back to the concerned Appellate Court for fresh consideration and decide the appeal on merits.

8. Considering the facts and circumstances of the case and the nature of disposal of the Appeal by the Appellate Court and also in view of the decisions of the Hon'ble Supreme Court and of this Court (cited supra), this Court is inclined to set aside the judgment dated 05.11.2015 passed in C.A.No.15 of 2015 by the Additional District cum Sessions Judge, Periyakulam. Accordingly, the judgment dated 05.11.2015 passed in C.A.No.15 of 2015 is set aside and the accused shall appear before the Appellate Court on 21.04.2017 by issuing P.T. warrant for his appearance. Further, the learned Additional District cum Sessions Judge, Periyakulam is hereby directed to restore the Appeal and to dispose of the appeal within a period of 3 weeks from the date of his appearance after giving opportunity to both sides and report the same to the Registry. Since it is stated that the accused is confined in Central Prison, Madurai, the Appellate Court is directed to issue P.T. warrant for appearance of the accused in C.A.No.15 of 2015 for hearing the accused if necessary. Even if the accused and his counsel failed to cooperate with the Appellate Judge, the learned Judge shall dispose of the appeal in accordance with law.



The Criminal Revision Case is ordered accordingly.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

- 1.The Additional District cum Sessions Judge, Periyakulam.
 - 2.The Judicial Magistrate, Uthamapalayam.
 - 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.
 - 4.The Sub Inspector of Police,
Gudalur North Police Station,
Gudalur, Theni District.
- +1cc to M/S.K.Guhan,Advocate,SR.18809

Cr1.R.C.(MD)No.291 of 2017

NBJ

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