

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.770 of 2018
And
Crl.M.P.Nos.8810 to 8812 of 2018

Velraj

... Petitioner

Vs.

State represented by
The Inspector of Police,
Nazarethpat,
Chennai.

.... Respondent

Prayer:

Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to set aside the judgment dated 09.08.2017 passed in C.A.No.27 of 2013 by the II Additional District Court, Poonamallee confirming the judgment passed by the Judicial Magistrate No.I, Poonamallee in C.C.No.314 of 2010 and to acquit the petitioner.

For Petitioner : Mr.P.Sesubalan Raja

For Respondent : Ms.S.Thankira

Government Advocate (Crl. Side)

O R D E R

This criminal revision has been filed seeking to set aside the judgment dated 09.08.2017 passed in C.A.No.27 of 2013 by the learned II Additional District Judge, Poonamallee, confirming the judgment passed by the learned Judicial Magistrate No.I, Poonamallee, in C.C.No.314 of 2010 dated 22.03.2013 and to acquit the petitioner.

2.The case of the prosecution is that on 31.07.2010, when the defacto complainant parked his vehicle namely, Mahindra Van bearing Registration No.TN 10 D 4403 worth about Rs.6 Lakhs, near a compound wall in the opposite side of Altaf Company in Pazhanjur Village, the petitioner along with the other accused stolen the said vehicle. Based on complaint filed by the defacto complainant, a case in Crime No.177 of 2010 was registered by the respondent

police. Accordingly, the respondent Police after conducting investigation, filed charge sheet before the trial Court.

3.The petitioner was arrayed as the second accused and he was convicted for the offence under Section 379 of I.P.C. and was sentenced to undergo six months simple imprisonment and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month by the trial Court and the period already spent in prison by the petitioner was ordered to be set off under Section 428 of Cr.P.C. Challenging the said conviction and sentence, the petitioner filed appeal before the lower Appellate Court. The conviction and sentence imposed upon the petitioner by the trial Court was confirmed by the lower Appellate Court. Aggrieved by the same, the petitioner has filed the present revision.

4.The learned counsel appearing for the petitioner would submit that though the petitioner preferred appeal before the lower Appellate Court, no opportunity was given to the petitioner to conduct the appeal. He would further submit that when the appeal was taken up for hearing by the lower Appellate Court, no one represented the appellant/petitioner herein. However, the lower Appellate Court instead of referring the matter before the State Legal Service Authority for proper adjudication and without giving opportunity to the accused, passed an exparte judgment which is not sustainable.

5.The learned Government Advocate (Crl. Side), on perusal of the judgment passed by the lower Appellate Court in C.A.No.27 of 2013 dated 09.08.2017, fairly conceded that no opportunity was given to the appellant/petitioner herein. She further requested this Court to remand the matter back to the lower Appellate Court for proper adjudication.

6.The learned counsel appearing for the petitioner undertook that the petitioner will appear before the lower Appellate Court and co-operate for proper adjudication of the case.

7.Considering the submissions made on either side and the fact that without giving opportunity to the appellant/petitioner herein, the lower Appellate Court dismissed the appeal and confirmed the conviction and sentence imposed upon the petitioner by the trial Court, this Court is inclined to set aside the judgment dated 09.08.2017 passed by the II Additional District Court, Poonamallee in C.A.No.27 of 2013 and remand the matter back to the lower Appellate Court for fresh and proper adjudication.

Accordingly, the judgment dated 09.08.2017 passed by the learned II Additional District Judge, Thiruvallur sitting at Poonamallee in C.A.No.27 of 2013 is set aside and the matter is remanded back to the learned II Additional District Judge, Thiruvallur sitting at Poonamallee. The learned II Additional District Judge, Thiruvallur sitting at Poonamallee, shall dispose of the matter as early as possible.

8.This criminal revision is allowed to the extent as indicated above. Consequently, the connected miscellaneous petitions are also closed.

pri

Sd/-

Assistant Registrar(CS vii)

//True Copy//

Sub Assistant Registrar

To

1.The II Additional District Court,
Poonamallee.

2.The Judicial Magistrate No.I,
Poonamallee.

+1cc to Mr.P.Sesubalan Raja , Advocate SR.No. 65959

Cr1.R.C.No.770 of 2018

And

Cr1.M.P.Nos.8810 to 8812 of 2018

ASK(10/10/2018)

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