

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 18.07.2018

JUDGMENT PRONOUNCED ON : 25.07.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Cr1.A.No.206 of 2008

C.A.Narayanan

.. Appellant / Complainant

versus

1.Iyanna

2.Ponnappa

3.Augustine Correa

4.Unni

... Respondent / Accused 1 to 4

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, against the order of conviction and sentence dated 23.04.1997 made in C.C.No.298 of 1995 by the learned Judicial Magistrate, Gudalur, The Nilgiris.

For Appellant : Mr.P.V.Ravichandran

For Respondents 1 to 4 : No Appearance

J U D G M E N T

The appellant herein is the complainant in C.C.No.298 of 1995 on the file of the learned Judicial Magistrate, Gudalur, The Nilgiris. Based on the complaint given by the appellant, the learned Judicial Magistrate took cognizance and taken the case on file on 08.08.1995 for the offences under Sections 147, 323, 506[i] and 427 of IPC. When the trial proceedings are pending before the said court, on 23.04.1997, the appellant had not been present for hearing before the Court. Further, on the side of the appellant, nobody was represented to his case. So, Mr.Rajendran, Office Assistant was examined as P.W.1 and thereafter, the learned Judicial Magistrate passed an order, in which, he dismissed the case filed by the appellant and acquitted the respondents under Section 256 of Cr.P.C.

2. Now, in order to set aside the said order passed by the learned Magistrate and for restoring the above said case on file, the appellant approached this court by way of this appeal.

3. Today, when the appeal is taken up for hearing, none of the respondents are appeared either themselves or through an advocate even after printing their names in the cause list. In the said situation, I have heard the arguments of Mr.P.V.Ravichandran, learned counsel appearing for the appellant and perused the records carefully.

4. The learned counsel appearing for the appellant would contend that for the offences alleged in the complaint filed by the appellant, another one case has been registered by the police officers against the appellant herein, which is now pending with the same court in C.C.No.277 of 1996. Further, he submits that on 18.04.1997 both the cases [the case pertaining to this appeal and C.C.No.277 of 1996] have been posted for hearing. Factually, the said date is a court holiday due to Bakrid Festival. Since the said date is a court holiday, the appellant did not attend the court. In the said circumstances, the police case i.e. C.C.No.277 of 1996 was adjourned to 21.05.1997 and the case pertaining to this appeal was adjourned to 23.04.1997. Further, he added since both the cases are cross cases, it is the duty of the learned Magistrate to adjourn both the cases jointly for some other date. But when passing such type of order, the clerk concerned adjourned the same for different dates, only because of that reason, on 23.04.1997, the appellant had not appear before the Court.

5. No doubt, the reason now submitted by the learned counsel appearing for the appellant is reasonable and convincing one. At the same time, it is the duty of the appellant to approach this Court immediately after passing the order of acquittal on 23.04.1997. In this case, inspite of appealing this Court, the appellant had approached the same court by way of filing another one complaint for the same set of facts. The said complaint has also erroneously taken on file by the learned Magistrate after discussing the events now stated above. So, the order passed by the learned Magistrate was challenged before this Court in CrI.O.P.No.18612 of 1998 and finally, the said O.P. was allowed on 07.05.1999 and quashed the proceedings related to the second complaint [C.C.No.364 of 1997].

6. Further, on 23.06.1999, the appellant approached this Court by way of filing this appeal along with the petition to condone the delay of 734 days. This Court, by its order dated 22.02.2008 condoned the delay in filing this appeal and thereafter, this appeal has been numbered as CrI.A.No.206 of 2008.

7. Now, the learned counsel appearing for the appellant relied on the judgment of our Honourable Apex Court in the case of SUDHIR vs. STATE OF M.P. reported in (2001) 2 SCC 688 and made a submission as counter or cross cases have to be disposed of by the same court simultaneously, however, in this case, the said procedure has not adopted by the learned Magistrate.

8. On considering the arguments advanced by the learned counsel appearing for the appellant, it is true that Section 210 Cr.P.C. clearly deals with regard to the cross

cases. No doubt trying both the cases separately is against the said provision. In this regard, the learned counsel submitted that as of now the police case filed in C.C.No.277 of 1996 had already been disposed of by the trial court, so, he himself admitted that no such police case is pending.

9. In the said circumstances, the learned counsel appearing for the appellant fairly conceded that no application is filed for setting aside the order passed by the trial court in C.C.No.277 of 1996, further, he did not submit the particulars about the mode of disposal. Now, it is not understandable for what purpose he wanted to set aside the impugned order passed by the learned Magistrate through this appeal. Moreover, the appeal is pertaining to the year of 1995, so, after the lapse of so many years filing this application is legally not justifiable.

10. In the light of the above discussion, this Court is not inclined to allow this Criminal Appeal and accordingly, the same is dismissed. Hence, the judgment of acquittal dated 23.04.1997 passed by the learned Judicial Magistrate, Gudalur, The Nilgiris, in C.C.No.298 of 1995 is hereby confirmed.

Sd/-
Assistant Registrar (CS IX)

//True copy//

Sub Assistant Registrar

sri

To

1. The Judicial Magistrate,
Gudalur, The Nilgiris.

2. do Thro The Chief Judicial Magistrate,
Ootacamund, The Nilgiris.

+1cc to Mr.P.V.Ravichandran, Advocate SR.No.50056

CrI.A.No.206 of 2008

VGII (CO)
GN(10/08/2018)