



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD)No.14330 of 2018

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Gethsy

: Petitioner

Vs.

K.Sornalingam (died)
S/o.Kasilinga Nadar,
(Represented by deceased wife)
Ezhil Annam
W/o.Sornalingam (Died)
No.31 C, T.B.Road,
Valliyoor,
Tirunelveli District.

: Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to direct the learned IV Additional Sessions Judge, Tirunelveli to dispose of independently and pass appropriate orders thereon on merits in the petition in Crl.M.P.No.35 of 2015 in C.A.No.38 of 2013 pending on it's file before the final verdict is delivered in the said criminal appeal.

For Petitioner

: Mr.R.Anand

ORDER

This Criminal Original Petition has been filed for a direction to the IV Additional Sessions Judge, Tirunelveli to pass independent order on merits in Crl.M.P.No.35 of 2015 and dispose of the same.

2.The petition in Crl.M.P.No.35 of 2015 was filed by the petitioner seeking for remand the case to the Trial Court on the ground that opportunity ought to have been given to the petitioner by the Trial Court while awarding the cheque amount as compensation payable to the respondent.

3.The learned counsel appearing for the petitioner submitted that the Appellate Court ought to have heard this matter independently and should have passed orders remanding the case to the Trial Court, before taking up the Criminal Appeal for final hearing.

4. The petition that has been filed in the Criminal Appeal as Crl.M.P.No.35 of 2015 has to be heard along with Criminal Appeal for more than one reason. The Appellate Court while considering the case in appeal, re-appreciates the entire facts of the case and also on the basis of such re-appreciation of facts, decides on



the question of conviction and sentence. Therefore, while the Appellate Court is deciding the entire case, there is no requirements for the Appellate Court to remand the case on the question of sentence and keep the appeal pending till the trial Court passes an order after remand on the question of sentence.

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5.Secondly, the Trial Court, while deciding the appeal even if ultimately concurs on the question of conviction, has been given an independent power to consider the sentence also. At that point of time it is always open to the Appellate Court to take a decision on the petition that has been filed by the petitioner on sentence in CrI.M.P.No.35 of 2015.

6.Therefore, this Court is of the considered view that the Appellate Court need not consider the petition filed in CrI.M.P.No.35 of 2015 independently and it is well open to the Appellate Court to consider the petition filed along with the appeal and pass appropriate orders.

7.With the above directions, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The IV Additional Sessions Judge,
Tirunelveli.

GNS

VB/SV/SAR2/07.09.2018/2P/2C

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