

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2019

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THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.R.C.No.624 of 2019
and
Crl.MP.Nos.8668 & 8669 of 2019

Prabhuram
S/o.Angamuthu

... Petitioner/Accused

-Vs-

The State
Represented by the
Inspector of Police
Karumalaikoodal Police Station. ...Respondent/ Complainant

Criminal Revision Petition filed under section 397 r/w 401 of the Code of Criminal Procedure to call for the records in the judgment of the Additional District (Fast Track Court) Mettur, passed in Crl.A.No.139 of 2018 dated 26.02.2019 setting aside the conviction and sentence imposed in C.C.No.213 of 2011 passed by the Judicial Magistrate No.II, Mettur, dated 23.08.2018 and remanding the case to the Trial Court and set aside the same and order for acquittal of the accused.

For Petitioner : Ms.J.Prithivi

For Respondent : Mr.G.Ramar
Government Advocate

O R D E R

This Criminal Revision Petition has been filed to set aside the judgment dated 26.02.2019 passed by the Additional District (Fast Track Court) Mettur, in Crl.A.No.139 of 2018, confirming the order dated 23.08.2018 passed by the Judicial Magistrate No.II, Mettur in C.C.No.213 of 2011.

2. The petitioner was prosecuted in C.C.No.213 of 2011 before the learned Judicial Magistrate No.II, Mettur, for the offences under Sections 279, 338 and 304-A IPC.

3. It is the case of the prosecution that on 03.07.2011, the deceased Swaminathan was going in a motor cycle bearing Registration No.TN-52-6635 with his wife viz., Lakshmi on the pillion and at that time, they were hit by a Tipper Lorry, which was driven by the petitioner herein, resulting in the death of Swaminathan and serious injuries to Lakshmi. The prosecution examined 11 witnesses and marked 10 exhibits. The trial Court, by judgement dated 23.08.2018, has convicted the accused of the said offences, challenging which, the accused filed CrI.A.No.139 of 2018 before the Sessions Court, which was heard by the learned Additional District Judge, Additional District (Fast Track) Court, Mettur. By order dated 26.02.2019, the Appellate Court allowed CrI.A.No.139 2018 by setting aside the conviction and sentence imposed by the trial Court and remanded the matter to the trial Court to retry the case with a direction to examine L.W.7-Lakshmi and L.W.13-Dr.J.Manimaran. Challenging the same, the petitioner/accused is before this Court.

4. Heard Ms.J.Prithivi, learned counsel for the petitioner and Mr.G.Ramar, learned Government Advocate for the respondent.

5. Ms.J.Prithivi, learned counsel for the petitioner submitted that the Appellate Court ought not to have remanded the matter for retrial to the trial Court, thereby giving an opportunity to the prosecution to fill up the lacuna. In support of her contention, the learned counsel placed reliance upon the judgment of the Supreme Court in Ajaykumar Ghoshal and Others -Vs- State of Bihar and another, [(2017) 12 SCC 699].

6. Per contra, the learned Government Advocate for the respondent refuted the contention put forth by the learned counsel for the petitioner.

7. This Court gave its anxious consideration to the rival submissions.

8. It is the specific case of the prosecution that while the deceased Swaminathan was riding the motor cycle, his wife Lakshmi was on the pillion. It is also the case of the prosecution that Lakshmi suffered serious injuries and was treated by Dr.J.Manimaran. Though Lakshmi and Dr.J.Manimaran were cited as prosecution witnesses in the charge sheet, the Prosecutor has dispensed with their examination in a cavalier manner without adequate reason. The copy of the Accident Register of Lakshmi has been marked through the Investigating Officer. Therefore, the Appellate Court was of the view that the trial was not properly conducted and that important witnesses viz., Lakshmi (L.W.7) and Dr.Manimaran (L.W.13) were not even examined.

9. In Ajaykumar Ghoshal (supra), relied on by the learned counsel for the petitioner, the Supreme Court has drawn distinction between retrial and de novo trial. Of course, the Supreme Court has held that retrial should be ordered only in exceptional cases. Some of the grounds, for which re-trial can be ordered, have been set out in Paragraph No.11 of the said judgment. The Supreme Court in Ajaykumar Ghoshal (supra), has relied upon the earlier judgement in Ukha Kolhe -Vs- State of Maharashtra, [AIR 1963 SC 1531], wherein, it was held that an order of retrial wipes out from the record the earlier proceeding, and exposes the person accused to another trial which affords the Prosecutor an opportunity to rectify the infirmities disclosed in the earlier trial, and will not ordinarily be countenanced when it is made merely to enable the Prosecutor to lead evidence which he could but has not cared to lead either on account of insufficient appreciation of the nature of the case or for other reasons. Whereas, in this case, the Appellate Court has remanded the matter to the trial Court for the limited purpose of examining Lakshmi (L.W.7) and Dr.J.Manimaran (L.W.13) as witnesses.

10. In the opinion of this Court, the Appellate Court should have exercised its powers under Section 391 Cr.P.C instead of ordering retrial.

11. In the result, the order dated 26.02.2019 passed by the Additional District Judge, Additional District (Fast Track Court) Mettur, in Crl.A.No.139 of 2018 is set aside and the Criminal Revision Petition is allowed with a direction to the Appellate Court to exercise its powers under Section 391 Cr.P.C for examining Lakshmi (L.W.7) and Dr.Manimaran (L.W.13) as witnesses, if they are available. The petitioner/accused is directed to appear before the Appellate Court on 05.08.2019 at 10.30 a.m. Similarly, the conviction and sentence imposed by the trial Court shall stand revived and bail bond, if any, executed by the petitioner for suspension of sentence and bail shall also stand revived. Connected miscellaneous petitions are closed.

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Assistant Registrar (CS VI)

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Sub Assistant Registrar

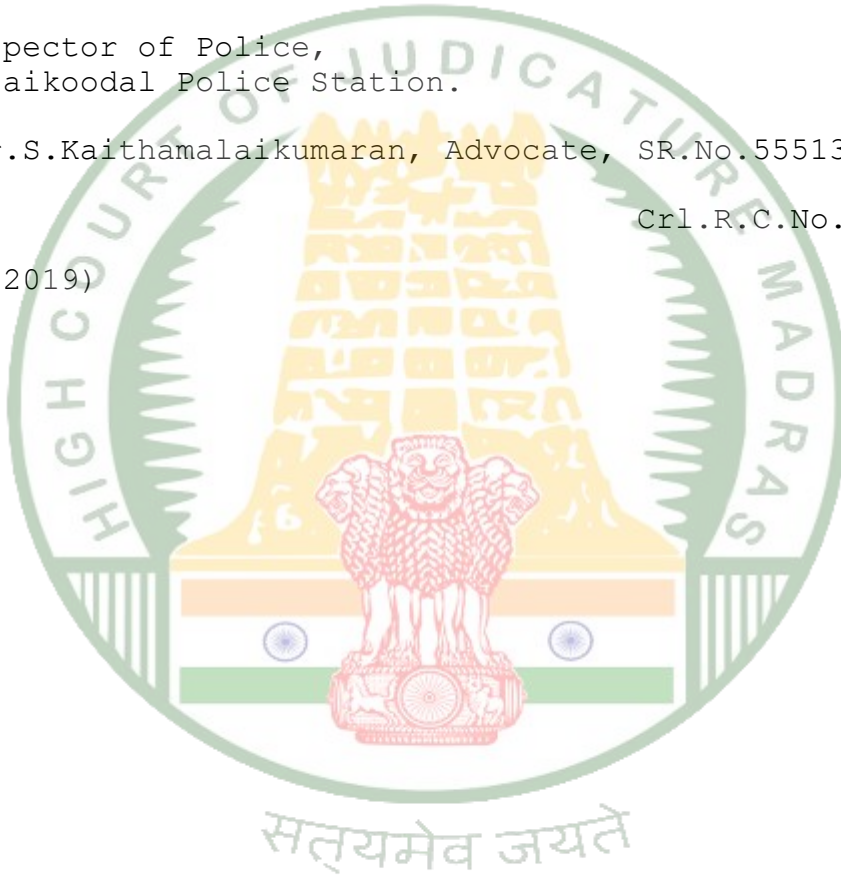
To

1. The Additional District (Fast Track) Court,
Mettur.
2. The Judicial Magistrate No.II,
Mettur.
3. The Public Prosecutor
High Court, Madras.
4. The Inspector of Police,
Karumalaikoodal Police Station.

+1cc to Mr.S.Kaithamalaikumaran, Advocate, SR.No.55513

Cr1.R.C.No.624 of 2019

Kak(05/07/2019)



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