

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.596 of 2019
and
Crl.M.P.No.8111 of 2019

S.Ayyappan

.. Petitioner/Accused

Vs.

State represented by its
The Inspector of Police,
All Women Police Station,
Tirupur-North,
Tirupur District.

.. Respondent/Complainant

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to set aside the order dated 28.05.2019 passed in Crl.M.P.No.2879 of 2019 in C.C.No.692 of 2017 on the file of the Judicial Magistrate Court -I, Tirupur District.

For Petitioner : Mr.P.M.Duraiswamy

For Respondent : Mr.G.Ramar
Government Advocate (Crl.Side)

ORDER

This petition has been preferred seeking to set aside the order dated 28.05.2019 passed in Crl.M.P.No.2879 of 2019 in C.C.No.692 of 2017 on the file of the Judicial Magistrate Court -I, Tirupur District.

2. The petitioner faced prosecution in C.C.No.692 of 2017 before the Judicial Magistrate-I, Tirupur, for the offence under Section 417 IPC. After completion of the trial, the case was posted on 28.05.2019, under the caption "for pronouncing judgment". On that day, the petitioner was absent. A petition under Section 317 Cr.P.C. was filed by the counsel for the petitioner which was rightly dismissed by the Trial Court. Thereafter, the Trial Court convicted the petitioner under Section 417 IPC and sentenced him to undergo one year rigorous imprisonment. After the judgment was delivered, the petitioner filed an application in Crl.M.P.No.2879 of 2019 in C.C.No.692 of 2017 under Section 389 (3) Cr.P.C. for suspension of sentence and bail, which has been dismissed by the Trial Court on

28.05.2019, challenging which, the petitioner/accused is before this Court.

3. Heard Mr.P.M.Duraiswamy, learned counsel for the petitioner/accused and Mr.G.Ramar, learned Government Advocate (Crl.Side) for the respondent/State.

4. Mr.P.M.Duraiswamy, learned counsel for the petitioner took this Court through the provisions of 353 (6) Cr.P.C. and submitted that it is not necessary that the accused should be present at the time of delivery of judgment. He also submitted that the accused did not know that the judgment would be delivered on 28.05.2019. Hence, he contended that the order passed by the Trial court requires to be interfered with.

5. Per contra Mr.G.Ramar, learned Government Advocate (Crl.Side) refuted the contentions of the learned counsel for the petitioner.

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

7. When an accused is on bail, he executes a bail bond, wherein, he agrees that he would attend the Court hearing on all dates. Of course, if, on any date, the accused is unable to be present, a petition under Section 317 Cr.P.C. can be filed by giving satisfactory reasons.

8. In this case, the accused was not present on 28.05.2019. However, his counsel was present and he had filed a petition under Section 317 Cr.P.C. Section 353 (1) Cr.P.C. states that the judgment shall be pronounced in the open Court immediately, after the termination of the trial or at some subsequent time, of which, notice shall be given to the parties or to their pleaders. That is why, whenever a case is adjourned, the Bench Clerk reads out the adjournment date loudly for everyone including the accused and his counsel to hear. That apart, necessary entries are made in the adjournment diary everyday, so that, the parties and their counsel can go through the A-diary and know about the next date of adjournment. Therefore, the reason given by the accused that he did not know that the case was posted on 28.05.2019, cannot be countenanced, because, his counsel was present in the Court and had filed an application under Section 317 Cr.P.C. The presence of the accused at the time of delivering the judgment is necessary for questioning him on the quantum of sentence. By not being present on the date of delivery of the judgment, the accused forfeits his right to plead for imposition of a lesser sentence and therefore, he cannot say that he was prejudiced. Even in the petition in Crl.M.P.No.2879 of 2019, the petitioner has not stated that he did not know about the hearing date. The Trial Court was

perfectly justified in dismissing the petition in CrI.M.P.No.2879 of 2019, because, an absconder cannot claim the privilege of law as held in Niranjan Singh Vs. Prabhakar Rajaram Kharote (AIR 1980 SC 785). In other words, only when an accused submits himself to the custody of the Court, can the Court exercise the power under Section 389 (3) Cr.P.C. Hence, this Court does not find any infirmity in the order passed by the Trial Court warranting interference.

In the result, this criminal revision petition is dismissed as being devoid of merits. Connected miscellaneous petition is closed. However, the petitioner may choose to surrender before the Trial Court immediately and submit himself to its jurisdiction and plead for recall of warrant or any other relief by giving proper and satisfactory explanation. If the Trial Court is satisfied with the explanation offered by the accused, then, it is open to the Trial Court to show indulgence to the petitioner/accused. It is also open to the Trial Court to hand over a free copy of the judgment and remand him to custody, so that the accused can approach the Appellate Court under Section 389 (1) Cr.P.C.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Principal District & Sessions Judge,
Tirupur District.
2. The Judicial Magistrate-I,
Tirupur District.
3. The Inspector of Police,
All Women Police Station,
Tirupur-North,
Tirupur District.
4. The Public Prosecutor,
Madras High Court, Chennai.

+1cc to Mr.P.M.Duraiswamy, Advocate, S.R.No.52066

CrI.R.C.No.596 of 2019

MR (CO)

RRS (27/06/2019)