

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.06.2019

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRIMINAL REVISION NO.601 OF 2019

AND

CRL.M.P.NO.8233 OF 2019

Vijayapriya

...Petitioner/
Complainant

Vs.

1.Kaniyakumari
2.Bhatran
3.Karuppusamy
4.Duraisamy

...Respondents/
A1 to A4

5.State by Inspector of Police,
Bangalapudur Police Station,
Erode District,
Crime No.360 of 2005.

...Respondents/
Dejure Complainant

PRAYER:Criminal Revision Petition filed under Section 397 and 401 of CrI.P.C. to set aside the order of acquittal imposed in the judgment dated 15.03.2019 made in C.A.No.80 of 2018 on the file of the III Additional District and Sessions Judge, Erode at Gobichettipalayam confirming the order dated 21.12.2010 made in C.C.No.188 of 2008 on the file of the Judicial Magistrate No.II, Gobichettipalayam by allowing this revision.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mrs.P.Kritika Kamal for R5
Government Advocate (Crl. Side)

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O R D E R

This criminal revision petition has been filed seeking to set aside the order of acquittal dated 15.03.2019 made in C.A.No.80 of 2018 on the file of the III Additional District and Sessions Judge, Erode at Gobichettipalayam, confirming the order dated 21.12.2010 made in C.C.No.188 of 2008 on the file of the Judicial Magistrate No.II, Gobichettipalayam.

2. On the complaint lodged by the petitioner, a case in Bangalapudur Police Station, Crime No.360 of 2005 was registered and after completing the investigation, charge sheet was filed in C.C.No.188 of 2008 before the learned Judicial Magistrate No.2, Gobichettipalayam for the offences under Sections 147, 148, 427, 352, 506(ii) and 109 IPC against Kanyakumari (A1), Bathran (A2), Karuppusamy (A3), Duraisamy (A4) and Ramasamy (A5).

3. After a full fledged trial, the trial Court by judgment dated 21.12.2010 has acquitted the accused A1 to A5 in C.C.No.188 of 2008. Challenging the order of acquittal, the petitioner filed C.A. No.80 of 2018 and the same is pending before the learned III Additional District and Sessions Judge, Erode, at Gobichettipalayam.

4. It is represented that Karuppusamy (A3) and Ramasamy (A5) died and notice in the appeal was served on Kanyakumari (A1) and Duraisamy (A4), who have entered appearance by engaging a counsel. The learned III Additional District and Sessions Judge has dismissed C.A.No.80 of 2018 on 15.03.2019 by passing the following order :

"Process against R2 not paid. Appeal dismissed as process not paid"

Challenging the said order, the petitioner is before this court.

5. Heard Mr.M.Guruprasad, learned counsel appearing for the petitioner and Mrs.Krithika Kamal, learned Government Advocate (Criminal Side) for the fifth respondent.

6. In the opinion of this Court, the entire appeal cannot be dismissed just because process fee was not paid for service of notice on one of the respondents. This is not the case based upon private complaint but on police report. It is for the police to produce the respondent/accused before the Appellate Court. The Appellate Court has powers under Section 390 Cr.P.C. to arrest the accused in an appeal against acquittal. The Appellate Court can also appoint a legal aid counsel for the accused, who is not appearing and proceed to dispose of the appeal on merits. Without resorting to these procedures, the dismissal of the appeal on the ground that process fee was not paid for service of notice on one of the accused, cannot be legally sustained.

7. In the result, this criminal revision petition is allowed and the order dated 15.03.2019 passed by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam in C.A.No.80 of 2018 is set aside. The

Appellate Court is directed to take steps to serve notice on the accused through the police and thereafter, proceed with the matter, as suggested supra. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

vri

To

1. The Inspector of Police,
Bangalapudur Police Station,
Erode District,
Crime No.360 of 2005.
2. The III Additional District and Sessions Judge,
Erode at Gobichettipalayam
3. The Judicial Magistrate-II,
Gobichettipalayam
4. -Do- Through The Chief Judicial Magistrate,
Erode,
5. The Public Prosecutor (Crl.Side),
Madras High Court.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.53597

सत्यमेव जयते

Cr1.R.C.No.601 of 2019

EV (CO)
CS/31/07/2019

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