

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 02.08.2019

CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.760 of 2019
and Crl.M.P.No.10751 of 2019

K.Sundaram

.. Petitioner/Appellant

Vs

State rep. by
The Inspector of Police,
Sathyamangalam Police Station,
Erode District
Cr.No.72/2010

..Respondent/Complainant

Criminal revision preferred under Section 397 read with Section 401 of Cr.P.C. to set aside the order passed by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam in Crl.A.No.322 of 2018 dated 06.12.2018 confirming the order passed by the learned Judicial Magistrate at Sathyamangalam in C.C.No.23 of 2012 dated 11.09.2018.

For Petitioner : Mr.S.Parthasarathy

For Respondent : Mrs.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

O R D E R

This Criminal Revision has been preferred to set aside the order dated 06.12.2018 passed by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam in Crl.A.No.322 of 2018.

2.One Sundaram (A1), S/o.Periyathimma Naicker and Sundaram (A2), S/o.Kannadi Ranga Naicker were prosecuted in C.C.No.23 of 2012 before the Judicial Magistrate, Sathyamangalam for the offences under Sections 324 and 326 IPC. By judgment and order dated 11.09.2018 in C.C.No.23 of 2012, the trial Court convicted both of them of the said offences and sentenced them to various terms of imprisonment. Challenging the conviction and sentence, Sundaram (A1) and Sundaram (A2) filed C.A.No.322 of 2018 before the Court of Session, which was made over to the III Additional District and Sessions Court, Gobichettipalayam. The appeal was filed through Mr.M.Dhanraj and Mr.M.Mathiyazhagan, Advocates. On 06.12.2018, the learned Judge passed the following order :

"Appellants called absent. No representation for appellants. Hence appeal is dismissed for default without cost."

Thereafter, Sundaram (A1), S/o.Periyathimma Naicker died on 18.12.2018. Pursuant to the dismissal of the appeal, Sundaram (A2), S/o.Kannadi Ranga Naicker filed the present revision petition with a delay of 72 days, which has been condoned by this Court in Crl.M.P.No.8987 of 2019 on 01.08.2019.

3.Heard Mr.S.Parthasarathy, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

4.This revision petition deserves to be allowed on the short ground that the appellate Court ought not to have dismissed the appeal for default, in the light of the judgment of the Supreme Court in L.Laxmikanta Vs. State [(2015) 4 SCC 95].

5.In the result, this revision petition is allowed and the order dated 06.12.2018 in C.A.No.322 of 2018 passed by the III Additional District and Sessions Judge, Erode is set aside and the matter is remanded to the said Court for disposal on merits. Setting aside the order of the appellate Court order would automatically revive the order of the trial Court. Hence, suspension of sentence and bail are granted to the petitioner on the following conditions :

- i. the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned III Additional District and Sessions Judge, Erode.
- ii. the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Sessions Judge may obtain a copy of their Aadhaar card or Bank pass Book to ensure their identity.
- iii. the petitioner shall appear before the III Additional District and Sessions Judge, Erode everyday at 10.30 a.m.
- iv. On breach of any of the aforesaid conditions, the learned Sessions Judge is entitled to take appropriate action against the petitioner as laid down by the Hon'ble Supreme Court in P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560].

v.If the petitioner absconds, a fresh FIR can be registered against him under Section 229-A IPC.

vi.If the petitioner does not co-operate for the disposal of the appeal, the learned Sessions Judge may appoint an amicus curiae and proceed with the disposal of the same on merits.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gya

To

1.The III Additional District and Sessions Judge,
Erode.

2.The Judicial Magistrate,
Sathyamangalam.

3.-do- Thro the Chief Judicial Magistrate,
Erode Dist.

4.The Inspector of Police,
Sathyamangalam Police Station,
Erode District.

5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.66238

सत्यमेव जयते

CRL.R.C.No.724 of 2019

VG I (CO)

RRS (06/08/2019)

WEB COPY