



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	10.06.2019
Date of Judgment	11.07.2019

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Crl.RC.(MD)No.289 of 2019****and****Crl.MP(MD)No.4281 of 2019**

Prabhu @ Gnanaraj : Revision Petitioner/
Appellant/Accused

Vs.

State rep. by
The Sub Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District.
Crime No.4 of 2002

: Respondents/Accused

Prayer: Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure against the order, dated 03.03.2015 passed in Crl.A.No.17 of 2006 on the file of the Principal Sessions Judge, Virudhunagar District @ Srivilliputhur, confirming the judgment passed in S.C.No.100 of 2003, dated 25.01.2006 on the file of the Chief Judicial Magistrate, Srivilliputhur, Virudhunagar District.

For Revision Petitioner : Mr.S.Maya Perumal
For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is directed against the order, dated 03.03.2015 passed in Crl.A.No.17 of 2006 on the file of the Principal Sessions Judge, Virudhunagar District @ Srivilliputhur, confirming the judgment passed in S.C.No.100 of 2003, dated 25.01.2006 on the file of the Chief Judicial Magistrate, Srivilliputhur, Virudhunagar District.

2.According to the prosecution, the accused had kidnapped the daughter of one Ramaraj. The Inspector of Police attached to North Circle Rajapalayam, Virudhunagar District has filed a final report against the accused.

3.In the trial court, 22 witnesses were examined and 13 Exhibits were marked. When the accused were questioned about the incriminating circumstances, they denied the same. On the side of



the accused, no witness was examined and no document was produced. The learned Chief Judicial Magistrate, Srivilliputhur, Virudhunagar District convicted the accused and sentenced him to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.2,000/-, in default to undergo further 6 months Rigorous Imprisonment. Aggrieved by the Judgment of the trial court, the accused preferred appeal in S.C.No.100 of 2003 on the file of the Principal District Judge, Virudhunagar District, which was dismissed for default on 25.01.2006. Against which, the present criminal revision is filed by the revision petitioner/accused.

4.The learned counsel appearing for the petitioner submitted that the trial court has not considered the age of the victim girl and the prosecution has not proved the correct date of birth of the victim girl and in this case PW4 to PW11 are the material witnesses and their evidence are not supporting to the prosecution case and they were turned hostile and the accused never kidnapped the victim girl and the victim girl fell on love with the accused and due to love and affection, the victim girl herself eloped with the accused to marry him and the accused and victim were lived as husband and wife for six months in various places and during that period, she has not given any complaint to anybody regarding the kidnapping. In view of the above circumstances, the revision petitioner is entitled to acquittal and prays for allowing the criminal revision.

5.On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that trial court appreciated the evidence in a proper manner and believed the evidence of the eye witnesses and having regard to the nature of the offences, convicted the accused and passed proper sentence, which do not require any interference by this court and prays that the criminal revision has to be dismissed.

6.Heard both sides and perused the materials available on record.

7.On perusal of the records, it is seen that the first appellate court has dismissed the appeal for default, confirming the judgment of the trial court. The first appellate court has not passed judgment on merits. The first appellate court without considering the facts of the case, has passed the non-speaking order, which is not correct. Hence, this court is of the considered view that the argument put forth on the side of the petitioner stating that the order passed by the first appellate court is not correct is acceptable. Further, the first appellate court while passing orders has not given an opportunity to the accused to defend the case by appointing the legal aid counsel.

8.In view of the above facts, this court is of the considered view that the matter has to be remitted back to the first appellate court for passing orders, on merits and in accordance with law.



9. In the result, this criminal revision is **allowed. The case is remitted back to the first appellate court for fresh disposal.** The first appellate court is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order, after giving opportunity to the parties concerned, on merits and in accordance with law and report the same to the Registry without fail. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

Sub Assistant Registrar(CS)

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To,

1. The Principal District and Sessions Judge,
Virudhunagar @ Srivilliputhur.
2. The Chief Judicial Magistrate,
Virudhunagar @ Srivilliputhur.
3. The Sub Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District.
4. The Additional Public Prosecutor,
Maudrai Bench of Madras High Court,
Madurai.
5. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

Crl.RC(MD) No.289 of 2019
11.07.2019

AL(CO)

TR (07.08.2019) 3P 7C