



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 21.11.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. R.C. (MD) NO. 733 OF 2019

AND

CRL. M.P. (MD) NOS. 8520 & 8521 OF 2019

John Khadar

.. Petitioner/Appellant/Sole Accused

- Vs -

State, rep. by

The Inspector of Police

Sattur Town Police Station

Virudhunagar District. .. Respondent/Respondent/Complainant

Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure, against the order dated 22.02.2019, passed by the learned Addl. District Court, Srivilliputtur, Virudhunagar District, in C.A. No.01/2013, Confirming the Conviction and Sentence imposed on the petitioner in SC.59 of 2009 dated 30.11.2012 by the Assistant Sessions Court, Sivakasi, Virudhunagar District.

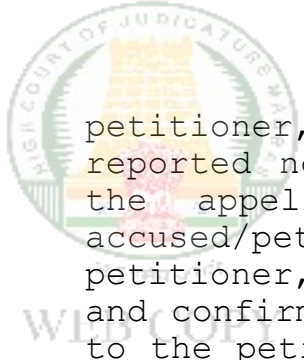
For Petitioner : Mr. R.Murugappan

For Respondents : Ms. M.Anantha Devi, GA (Crl. Side)

ORDER

The present revision has been filed against the order passed by the learned Addl. District Court, Srivilliputtur, Virudhunagar District in C.A. No.01/2013 confirming the conviction and sentence recorded by the Assistant Sessions Judge, Sivakasi, in S.C. No.59/2009 in and by which the petitioner herein was convicted and sentenced to rigorous imprisonment for a period of six months along with a fine of Rs.500/-, in default to undergo simple imprisonment for a period of one month for the offence u/s 448 IPC and sentenced to three years rigorous imprisonment along with a fine of Rs.2,000, in default, to undergo simple imprisonment for a period of six months for the offence u/s 307 IPC. Aggrieved by the said judgment confirming the conviction and sentence, the present revision has been preferred by the petitioner.

2. The order passed by the appellate court is assailed on the ground that unfortunately, when the appeal was sought to be taken up for final hearing, learned counsel appearing for the revision



petitioner, who was the appellant before the appellate court reported no instructions and on the basis of the said submission, the appellate court appears to have issued notice to the accused/petitioner. However, since there was no appearance for the petitioner, the appellate court proceeded further with the appeal and confirmed the order passed by the trial court, which, according to the petitioner, cannot be sustained, as the petitioner cannot be convicted without affording an opportunity of hearing.

3. At the outset, it is the contention of the learned counsel for the petitioner that the petitioner/accused ought to have been given an opportunity before confirming the conviction imposed on the petitioner by the trial court. In support of his contention, learned counsel drew the attention of this Court to the recent decision of the Hon'ble Supreme Court in **C.A. Nos.986-987/2019 (Christopher Raj - Vs - K.Vijayakumar - Dated 05.07.2019)**, more specifically to paragraph-9 of the said judgment, wherein the Supreme Court has held as under:-

"9. Admittedly, the appellant-accused did not appear in the criminal appeal before the High Court. When the accused has not entered appearance in the High Court, in our view, the High Court should have issued second notice to the appellant-accused or the High Court Legal Services Committee to appoint an advocate or the High Court could have taken the assistance of amicus curiae. When the accused was not represented, without appointing any counsel as amicus curiae to defend the accused, the High Court ought not to have decided the criminal appeal on merits; more so, when the appellant-accused had the benefit of the acquittal. The High Court erred in reversing the acquittal without affording any opportunity to the appellant-accused or by appointing an amicus curiae to argue the matter on his behalf."

4. It is therefore submitted by the learned counsel for the petitioner that the matter requires to be remitted back to the appellate court for giving an opportunity to the petitioner herein before passing final orders in the appeal.

5. At this, learned Government Advocate (Crl. Side), appearing for the prosecution submits that the appellate court has taken steps to issue notice to the accused/appellant, but he did not choose to appear before the appellate court despite the fact that the advocate engaged by the appellant/accused before the appellate court did not choose to represent the case and he reported no instructions. Therefore, according to the learned Government Advocate, the appellate court has passed a detailed order by adverting to the various materials placed on record and only thereafter, confirmed the conviction and sentence imposed by the trial court.



6. This Court considered the rival submissions advanced by the learned counsel on either side and perused the materials available on record.

7. This Court is entirely in agreement with the submission made on behalf of the learned counsel for the petitioner. When the appellate court confirmed the order of conviction and sentence imposed on the petitioner by the trial court, the appellate court ought to have given an opportunity to the petitioner as held by the Hon'ble Supreme Court. Non-providing of opportunity to the petitioner has resulted in gross injustice to the petitioner/accused, particularly when the conviction and sentence passed by the trial court was confirmed by the appellate court. In fact, the Hon'ble Supreme Court as also this Court, have consistently held that even in the absence of the appearance of the accused, despite notice, a duty is cast upon the courts to appoint an advocate from the legal aid panel or to appoint an amicus curiae to assist the court and defend the case of the accused and only after such procedure is followed, the courts could either confirm the order passed by the trial court or take a different decision otherwise. In this case, admittedly, as records would disclose, the petitioner herein was not represented at all. No matter whether he has received the notice or not, it is imperative on the part of the appellate court to appoint a counsel to plead the case of the accused before taking a final decision in the matter.

8. For the above said reason, this Court finds that the order passed by the appellate court in C.A. No.01/2013 confirming the order passed by the trial court is liable to be set aside and, accordingly the same is set aside. The matter is remanded back to the appellate court, which shall provide an opportunity to the petitioner/accused and, thereafter, pass appropriate orders after hearing the parties. Since the matter is being remanded, the appellate court is directed to hear the matter and pass final orders thereon, after affording an opportunity of hearing to either side., within a period of six months from the date of receipt of a copy of this order.

9. This criminal revision petition is allowed with the aforesaid direction. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

Sub Assistant Registrar(CS)



To

1. The Addl. District Sessions Judge,
Srivilliputtur
Virudhunagar District.

2. The Assistant Sessions Judge, sivakasi,
Virudhunagar District.

3. The Inspector of Police,
Sattur Town Police Station,
Virudhunagar District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1CC TO MR.R.MURUGAPPAN, Advocate Sr. No. 100193

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