



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:17.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE **B. PUGALENDHI**

Crl.R.C(MD)No.359 of 2014

and

M.P.(MD).No.1 of 2014

S.Sangayee

... Petitioner /Complainant

Vs.

Paraman

... Respondent/Accused

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the original records in Criminal Appeal No.26 of 2014 on the file of the Principal Sessions Judge, Tiruchirapalli dated 25.06.2014 setting aside the conviction and sentence rendered by the learned Judicial Magistrate, Manapparai, in C.C.No.134 of 2013 dated 17.03.2014, set aside the same as illegal.

For Petitioner : Mr.A.Hariharan
For Respondent : Mr.V.Karthikeyan
for Mr.A.Rajendhran

ORDER

This revision petition has been filed by the complainant as against the order passed by the Appellate Court in C.A.No.26 of 2014, dated 25.06.2014.

2.The petitioner/complainant has preferred a private Complaint as against the respondent herein for the offence punishable under Sections 217, 294(b) and 506(i) IPC. The learned Judicial Magistrate, Manapparai, by order dated 17.03.2014, found that the respondent was guilty for the offences under Sections 217 and 506 (i) IPC, convicted and sentenced him to undergo one year rigorous imprisonment with fine of Rs.1,000/- under Section 217 IPC and in default to undergo 2 months simple imprisonment and further he was sentenced to undergo one year rigorous imprisonment with fine of Rs.1,000/- in default, to undergo two months simple imprisonment under Section 506(i) IPC. Both the sentences were ordered to run concurrently.

<https://hcservices.courts.gov.in/services> 3. As against the order of conviction, the respondent has filed



an appeal before the Principal Sessions Court, Trichy in C.A.No.26 of 2014. The respondent herein has also filed an application under Section 391 Cr.P.C before the Appellate Court for taking out an additional evidence by marking the following documents through the Inspector of Police, Vaiyampatti Police Station:

WEB COPY

- 1.Certified copy of general Diary of Vaiyampatti Police Station dated 09.04.2013.
- 2.Attendance Certificate issued by Additional Public Prosecutor to the appellant.

4.The above said application was also opposed by the petitioner/complainant on the ground that for the very same purpose, the respondent/accused has also filed an application before the Trial Court under Section 91 Cr.P.C. But the same was dismissed by the Trial Court and the respondent has not challenged the same and therefore, he was barred from filing this application before the Appellate Court.

5.The Appellate Court by judgment, dated 25.06.2014 in C.A.No.26 of 2014 passed the following order:

"Therefore on this ground the conviction and sentence is set aside and the matter is remanded back to the lower Court for the limited purpose of letting in evidence on the part of the accused based on the documents filed herein in the Cr.M.P.441 of 2014 as well as with any other documents which shall be related or connected to the said plea. The trial Court is hereby directed to dispose of the case as indicated above. Appeal allowed accordingly."

6.Aggrieved over the same, this revision petition has been filed by the complainant on the ground that the Appellate Court while entertaining Cr.M.P.NO.441 of 2014, ought to have taken the evidence on its own, instead of remanding the matter back to the trial Court for the limited purpose of recording the evidence. But, while doing so, the Appellate Court has also set aside the conviction and sentence passed by the trial Court and therefore, he prays for interference.

7.In support of his contention, the learned counsel appearing for the petitioner has relied upon decision rendered by this Court reported in **2003 CRI. L.J. 4049** in **T.Vennila Vs. Thangavel alias Kumar and others**, wherein, it is held as follows:

"4.A reading of Section 391 makes it abundantly clear that when an application is brought before the Appellate Court for adducing fresh evidence, the Appellate Court if it thinks



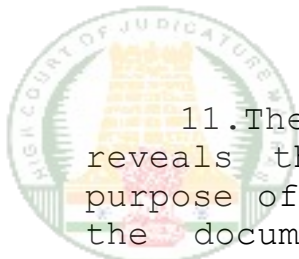
that additional evidence is necessary, shall record its reasons and may either take such evidence itself or direct it to be taken by a Magistrate and such evidence shall be taken before the Pleader or the accused as the case may be and while taking such evidence the Court shall adhere to Chapter XXIII of the code which relates to the mode of taking and recording the evidence in enquiries and trials thereby meaning that the other side has a right to cross examine the witnesses in relation to the materials brought in evidence afresh but however this Section does not authorise the Appellate Judge to set aside the conviction and sentence and remand the case back to the trial Judge for recording evidence."

8.The learned counsel appearing for the petitioner has also referred to the decision of the Honourable Supreme Court in the case of **Avtar Singh and others Vs. Bhajan Singh and others** reported in **(1998) 2 SCC 750**, wherein, in para 3 extracted hereunder, it is held as follows:

"It is contended by the learned counsel for the appellant that the order passed by the High Court is illegal inasmuch as retrial could not have been ordered without setting aside the judgment passed by the trial Court. As the appeal filed by the Appellant 1 is pending in the High Court, we do not propose to say anything else except that the order passed by the High Court is clearly illegal. As retrial could not have been ordered without setting aside the order of the trial Court, on that short ground alone, we allow this appeal and set aside the judgment and order passed by the High Court."

9.Per contra, the learned counsel appearing for the respondent/accused would submit that the order passed by the Appellate Court in C.A.No.26 of 2014 is an order passed in the appeal and not in the application in Cr.M.P.No.441 of 2014 and therefore, the Appellate Court is having the power either to modify or to reverse the order passed by the Trial Court, as per the powers conferred under Section 386 Cr.P.C. Therefore, there is no error on the part of order and there is no interference is required.

10.Heard the learned counsel on either side and also perused the records.



11.The operative portion of the order of the Appellate Court reveals that the order has been passed only for the limited purpose of letting in evidence on the part of the accused based on the documents filed in Cr.M.P.No.441 of 2014. There is no discussion with regard to the merits of the appeal while passing the order in C.A.No.26 of 2014. The Appellate Court instead of passing the order in Cr.M.P.No.441 of 2014 has passed the order in C.A.No.26 of 2014, remanding the matter for letting evidence. While doing so, the Appellate Court has also set aside the conviction and sentence passed by the Trial Court.

12.Section 391 Cr.P.C reads as follows:

"391.Appellate Court may take further evidence or direct it to be taken:-

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

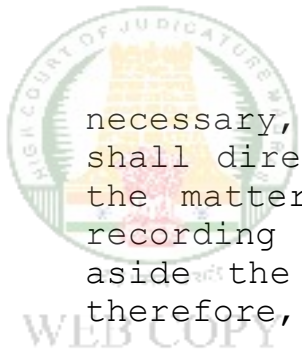
(2)When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3)The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4)The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

13.While dealing with an appeal, the Appellate Court is entitled to record the additional evidence, if it thinks the additional evidence is necessary. If the Court feels it has to be recorded by the trial Court, the appellate Court shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate for recording evidence. In this case, the order came to be passed, based on the application filed in Cr.M.P.No.441 of 2014 and the operative portion of the order has also been extracted above. The matter was remanded back only for the limited purpose of recording the evidence. In the absence of any discussion with regard to the merits of the appeal, this Court is not in a position to accept the case of the respondent/accused that the order passed in C.A.No.26 of 2014 need not be interfered with.

14.In view of the decision of this Court in **T.Vennila's** case (*supra*) the Appellate Court, if it thinks additional evidence is



necessary, it can record its reasons and take the evidence or shall direct it to be taken by a Magistrate. But, while remanding the matter to the trial Court only for the limited purpose of recording evidence, the Appellate Court ought not to have set aside the order of conviction granted by the trial Court and therefore, the same deserves interference.

15. Accordingly, this revision petition is allowed and the order dated 25.06.2014 passed by the learned Principal Sessions Judge, Tiruchirapalli, in setting aside the conviction and sentence imposed by the trial Court alone is set aside. The order of the Appellate Court in remanding the matter for taking evidence remains unaltered. The trial Court, namely, the learned Judicial Magistrate, Manapparai, shall record the evidence, for which it has been remanded, within a period of two months from the date of receipt of a copy of this order and thereafter, shall remit the matter back to the Appellate Court. Thereupon, the Principal Sessions Judge, Tiruchirapalli, can decide the appeal, on its own merits and in accordance with law. Consequently, the connected M.P. (MD).No.1 of 2014 is closed.

Sd/-

Assistant Registrar (RECORDS)

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/ /2020

Sub Assistant Registrar (CS)

vsg

To

1. The Principal Sessions Judge,
Tiruchirapalli.

2. The Judicial Magistrate, Manapparai.

3. The Record Keeper, -2 COPIES

V.R. Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to MR.A.HARIHARAN, Advocate (SR-87021[F] dated 17/09/2019)

+1 CC to MR.V.KARTHIKEYAN, Advocate (SR-87324[F] dated 18/09/2019)

ORDER MADE IN

Crl.R.C (MD) No.359 of 2014

17.09.2019

KM (27.07.2020) 5P 7C

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