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Crl.R.C.No.1481 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

CORAM:

**THE HON'BLE Mr. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.1481 of 2022  
and  
Crl.M.P.Nos.16832 and 16833 of 2022

Devanadan

... Petitioner

Versus

The State Represented by  
The Sub Inspector of Police,  
Naduveerampattu Police Station,  
Cuddalore District.

... Respondent

Criminal Revision Case filed under Sections 397 r/w 401 of Criminal Procedure Code to set aside the judgment dated 20.06.2022 in Crl.A.No.15 of 2021 passed by the Court of Sessions, Cuddalore District (Principal Judge) Cuddalore as against C.C.No.14 of 2017 passed by the learned Judicial Magistrate No.1, Cuddalore on 05.02.2021 and provide one more opportunity for advancing arguments in Crl.A.No.15 of 2021.

For Petitioner : Mr.J.Hari Krishna  
For Respondent : Mr.S.Sugendran  
Additional Public Prosecutor

### **ORDER**

This Criminal Revision Case has been preferred challenging the judgment dated 20.06.2022 passed in Crl.A.No.15 of 2021 by the learned Principal Sessions Judge, Court of Sessions, Cuddalore District, Cuddalore.



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2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent and also perused the materials available on record.

3. The leaned counsel for the petitioner submitted that during the course of arguments the petitioner was suffering from jaundice and because of that he was not able to make his appearance and instruct his counsel to advance his arguments on the date of hearing before the Court below. The lower appellate Court without providing sufficient opportunity to the petitioner, dismissed the appeal for non-prosecution, which warrants interference of this Court.

4. On a perusal of the records, it is seen that the lower appellate Court dismissed the appeal for non-prosecution, since on the date of hearing, the petitioner did not appear before the Court below.

5. It is the contention of the learned counsel for the petitioner that on the date of hearing the petitioner was not well and was suffering from jaundice, due to which he could not give instructions to his counsel also and



the lower appellate Court without considering the same dismissed the appeal on the same day itself. The said contention is not acceptable, since it is seen that the appeal was pending before the lower appellate Court for one year and when it was taken up for hearing on 20.06.2022, the lower appellate Court made an observation that despite sufficient opportunities, the petitioner/appellant did not come forward to argue the matter and hence, dismissed the appeal for non-prosecution.

6.In the absence of the appellant/accused, the appellate Court should not dismiss the criminal appeal filed by the accused on merits, however, the lower appellate Court dismissed the appeal for non-prosecution, since the petitioner did not appear before the Court. In the case on hand, the petitioner has not given any valid reason for his non-appearance. Normally, in the criminal cases, if the accused obtains suspension of sentence in the appeal filed against conviction, thereafter, fails to appear before the Court to proceed with the matter further, the Appellate Court has no option except to dismiss the appeal for non-prosecution. Now the petitioner has approached this Court only on the ground that no opportunity was given by the lower appellate Court to proceed with the matter further. The reasons stated in the grounds of



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the appeal and the contention raised by the appellant are not acceptable, however, in order to give an opportunity to the petitioner/appellant to pursue the appeal on merits, I deem it appropriate to remand the matter back to the learned Sessions Judge, to dispose of the appeal on merits after providing an opportunity to the petitioner.

7.In the result, this Criminal Revision Case is allowed and the order dated 20.06.2022 passed in Crl.A.No.15 of 2021 by the learned Principal Sessions Judge, Court of Sessions, Cuddalore, is set aside and the matter is remitted back to the lower appellate Court, who shall pass orders on merits and in accordance with law, after affording an opportunity to the revision petitioner. The petitioner/appellant is directed to appear before the learned Sessions Judge on 17.11.2022 and argue the matter on the same day without fail. In case the petitioner is not co-operating for early disposal of the appeal, the learned Sessions Judge is directed to appoint a competent legal aid counsel through Legal Services Authority and cancel the vakalt filed by the learned counsel for the appellant on record and hear the matter through the



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legal aid counsel and dispose of the appeal on merits and in accordance with law on or before 25.11.2022. Consequently, connected miscellaneous petitions are closed.

**09.11.2022**

Index : Yes/No  
Speaking Order/Non Speaking Order  
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**Note: Issue order copy on 10.11.2022**

To

1. The Principal Judge,  
Court of Sessions,  
Cuddalore District.
- 2.The Judicial Magistrate No.1,  
Cuddalore.
- 3.The Public Prosecutor,  
High Court, Madras.
- 4.The Sub Inspector of Police,  
Naduveerampattu Police Station,  
Cuddalore District.



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**P.VELMURUGAN, J.**

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