



Crl.R.C.No.1831 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1831 of 2023

and

Crl.M.P.No.17305 of 2023

1.Rajkumar

2.Umesh

... Petitioners/Accused

Vs.

State rep by

The Inspector of Police,

Kannamangalam Police Station,

Tiruvannamalai District.

(Crime No.137/2015)

... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 r/w. 401 of Cr.P.C, prayed to call for the records relating to the judgment passed in Crl.A.No.1/2018 on 14.07.2023 by the Additional District Judge (FTC), Arani, Tiruvannamalai District, confirming the conviction and sentence passed in S.C.No.47 of 2016 dated 30.11.2017 on the file of the Assistant Sessions Court, Arani and set aside the same.

For Petitioners : Ms.M.Rebecca

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

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This Criminal Revision Case has been filed to set aside the judgment passed in Crl.A.No.1 of 2018 dated 14.07.2023 by the learned Additional District Judge (FTC), Arani, Tiruvannamalai District, confirming the conviction and sentence passed in S.C.No.47 of 2016 dated 30.11.2017 on the file of the Assistant Sessions Court, Arani.

2. The petitioners herein are A1 and A2 in S.C.No.47 of 2016, who were charged for offences under Sections 294(b), 341, 307, 323, 326 r/w.34, 506(ii) of IPC. The trial Court after full fledged trial by judgment dated 30.11.2017 convicted both the petitioners/accused. As regards first petitioner/A1 is concerned, he was convicted for offence under Sections 341 and 326 IPC and sentenced to undergo one month simple imprisonment for offence under Section 341 IPC and three years simple imprisonment and to pay a fine of Rs.15,000/- for offence under Section 326 IPC. As regards second petitioner/A2 is concerned, he was convicted for offence under



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Sections 341 r/w 34 and 326 r/w 34 of IPC and sentenced to undergo one month simple imprisonment for offence under Section 341 r/w 34 IPC and three years simple imprisonment and to pay a fine of Rs.15,000/- for offence under Section 326 r/w 34 of IPC. Aggrieved against the conviction, they preferred an appeal before the learned Additional District Judge (FTC), Arani, Tiruvannamalai in C.A.No.1 of 2018. The learned Additional District Judge (FTC), Arani by judgment dated 14.07.2023, dismissed the appeal summarily on the ground that no representation on the appellants' side. Against which the present revision has been filed.

3. Learned counsel for petitioner submits that A1 in this case was detained as 'Goonda' under Act 14 of 1982 in சி3/த.கா.ஆணை எண்.64/2023 dated 07.07.2023. He had been detained in Central Prison, Vellore from 07.07.2023. As regards A2, though counsel has been engaged by A2, for some reason the learned counsel for the appellants could not appear before the Lower Appellate Court at the time of calling of the case. The summary



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dismissal of the appeal is against the provision of Section 386 Cr.P.C., wherein it is mandated that the appellant to be heard. In this case, there was no opportunity of hearing given to the appellants. Further submitted that this Court as well as Hon'ble Apex Court in several cases have reiterated this principle and set aside the summary dismissal of the appeal, which was rendered without giving an opportunity of appellant being heard.

4. In support of his contention, learned counsel relied upon the judgments of the Hon'ble Supreme Court in the case of ***Dhananjay Rai @ Guddu Rai vs. State of Bihar*** in Criminal Appeal No.803 of 2017, ***K.Muruganandam and others vs. State rep by the Deputy Superintendent of Police and another*** in Criminal Appeal No.809 of 2021 and ***Kishan Singh vs. State of Uttar Pradesh*** in Criminal Appeal No.183 of 1993, wherein it is reiterated that the appeal cannot be dismissed for default on the ground of absence of the appellant or his counsel.



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5. Learned Additional Public Prosecutor appearing for the respondent does not have much of a say in this case. He admits that the dismissal of the appeal on the ground of absence of the appellants may not be proper. Hence, he has got no objection in setting aside the judgment passed in C.A.No.1 of 2018 and remitting the matter back to the Lower Appellate Court to hear the appellants and decide the case on merits.

6. Considering the submissions made and on perusal of the material it is seen that the fundamental principle of appellant should be heard and no person to be punished without giving an opportunity as per Section 386 of Cr.P.C. not followed. Further, this Court as well as Hon'ble Apex Court in several cases have reiterated the said principle. It is also to be seen that A1 detained as 'Goonda' on 07.07.2023 and he is confined in Central Prison, Vellore. The Lower Appellate Court judgment passed on 14.07.2023. In view of the same, this Court set aside the order passed by the learned Additional District Judge (FTC), Arani, Tiruvannamalai in C.A.No.1 of 2018 dated



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and remit back the matter to the Lower Appellate Court (Additional District Judge (FTC) Court, Arani, Tiruvannamalai) for fresh consideration of the appeal, after hearing the appellants. In the event of appellants non co-operation, the Lower Appellate Court can take coercive action in this regard, ensure the presence of the appellants.

7. Learned counsel for the petitioners submits that she would instruct the petitioners herein to participate in the appeal without absenting themselves either personally or through their counsel.

8. Accordingly, this Criminal Revision Case is allowed.
Consequently, connected Criminal Miscellaneous Petition is closed.

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Index : Yes/No

Speaking order/Non-speaking order

Neutral citation: Yes/No

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To

- 1.The Inspector of Police,
Kannamangalam Police Station,
Tiruvannamalai District.
- 2.The Additional District Judge (FTC),
Arani, Tiruvannamalai District.
- 3.The Assistant Sessions Judge,
Arani, Tiruvannamalai District.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR,J.

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