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CrI.R.C.No.460 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CrI.R.C.No.460 of 2023

Manoharan

... Petitioner

Vs.

M.Balamurugan

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of the Code of Criminal Procedure, to call for the records of the lower Court and set aside the order and judgment dated 10.02.2022 made in C.A.No.78 of 2021, on the file Principal Sessions Judge at Salem confirming the order passed in S.T.C.No.26 of 2017 dated 03.11.2020 on the file of the Judicial Magistrate, Fast Track Court at Omalur and allow this Criminal Revision Petition.

For Petitioner : Mr.M.Elango

For Respondent : Mr.N.Manoharan



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ORDER

This revision challenges the judgment, dated 10.02.2022 in Crl.A.No.78 of 2021 passed by the learned Principal Sessions Judge, Salem dismissing the appeal against conviction filed by the petitioner for default.

2.The Hon'ble Supreme Court and this Court had repeatedly held that an appeal against the conviction cannot be dismissed for non-prosecution; and that the Court has to decide the case on merits and if necessary by appointing a Legal Aid Counsel. In this case, no such procedure was followed by the learned Judge while dismissing the appeal. The relevant observations of the Hon'ble Supreme Court in this regard in “***Bani Singh and others v. State of U.P*** reported in ***(1996) 4 Supreme Court Cases 720***” reads as follows:

“14.We have carefully considered the view expressed in the said two decisions of this Court and, we may state that the view taken in Shyam Deo case [(1971) 1 SCC 855 : 1971 SCC (Cri) 353 : AIR 1971 SC 1606] appears to be sound except for a minor clarification which we consider necessary to mention. The plain language of Section 385 makes it clear that if the



appellate court does not consider the appeal fit for summary dismissal, it 'must' call for the record and Section 386 mandates that after the record is received, the appellate court may dispose of the appeal after hearing the accused or his counsel. Therefore, the plain language of Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution simpliciter. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly expects the appellate court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record."

3. In view of the above, this Court is of the view that the impugned judgment dismissing the appeal has to be set aside and the appeal has to be heard afresh on merits. Accordingly, the impugned judgment, dated 10.02.2022 in Crl.A.No.78 of 2021 passed by the learned Principal Sessions



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Judge, Salem is set aside and the matter is remanded back to the learned

Judge to decide the appeal on merits. Since the appeal is of the year 2021,

the learned Judge shall dispose of the appeal as expeditiously as possible.

4. With the above observation, this Criminal Revision Case stands allowed.

21.11.2024

Index: Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation: Yes/No

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To

The Principal Sessions Judge,
Salem.



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SUNDER MOHAN, J.

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