

(1997) 01 SC CK 0144

In the Supreme Court Of India

Case No : Criminal Appeal No. 147 of 1997 Arising out of SLP (Criminal) No. 3181 of 1996

A. Sivanesan

APPELLANT

Vs

State of T.N.

RESPONDENT

Date of Decision : 27-01-1997

Acts Referred:

Citation : (1999) 3 ACR 2562 : (1998) 9 JT 287 : (1997) 11 SCC 204

Hon'ble Judges : A. M. Ahmadii, C.J; Sujata V. Manohar, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Special leave granted.

2. On 1-10-1996 while directing notice to issue insofar as Petitioner 4, A. Sivanesan is concerned, it was felt necessary to verify whether or not notice of lodgment of appeal was served on him before the appeal was disposed of by the High Court. The Registrar of the High Court was directed to verify the record and to inform this Court whether or not the notice of lodgment of appeal was initially served on A. Sivanesan also along with Petitioners 1, 2 and 3. The SLP insofar as Petitioners 1, 2 and 3 are concerned has already been dismissed. We now find from the letter of the Assistant Registrar of the High Court of Tamil Nadu dated 29-10-1986 that no notice of lodgment of appeal was served on the petitioner - A. Sivanesan - before the appeal was disposed of.

3. The facts reveal that the appeal was allowed and the order of acquittal was set aside by the High Court. Thereafter, this petitioner/appellant applied by Crl MPs Nos. 1907-08 of 1996 for recalling the order and for hearing the appeal on merits. The learned Single Judge in the High Court observes that although the vakalatnama was filed on behalf of the first three respondents only, on the docket of the vakalatnama it was mentioned that the counsel was appearing for all the respondents. This misled the registry of the High Court to think that the

advocate was appearing on behalf of all the respondents and, therefore, it notified the appeal to be ripe for hearing. It now transpires that the present petitioner/appellant - A. Sivanesan - had in fact not been served. Merely because an advocate was appointed amicus curiae for all the respondents because the counsel who filed the vakalatnama did not appear, the defect insofar as the present petitioner/ appellant is concerned, cannot be said to be cured. The petitioner/appellant, if he were served, was entitled to engage his own counsel, if he so desired. We are, therefore, of the opinion that having regard to this situation the judgment in appeal against him must be recalled and the matter must go back to the High Court for the disposal of the appeal on merits. Since he is now represented before us by counsel, we direct that he appear before the Registrar of the High Court on 25-2-1997 so that the Registrar may inform him of the next date of hearing of his appeal. This would ensure that history does not repeat itself and time is not lost in effecting service on the petitioner/appellant.

4. The petitioner/appellant has surrendered. He is already on bail and will continue to be on bail till his appeal is disposed of by the High Court. This appeal will stand so disposed of. Needless to say, the observations made by the High Court while disposing of the appeal will not stand in his way and he will receive a fresh consideration in the light of submissions that may be made on his behalf. The appeal is disposed of accordingly.