
(2015) 06 MAD CK 0456

In the Madras High Court

Case No : Criminal Revision Case No. 1114 of 2014, M.P. Nos. 1 and 2 of 2014

Kasirajan

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304 (A)

Citation : (2015) 06 MAD CK 0456

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : P. Saravana Sowmiyan, for the Appellant; V. Arul, Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J—The petitioner stood charged for the offences punishable under Section 279 and 304 (A) of IPC and tried before the learned Judicial Magistrate No. VII, Coimbatore. Ultimately, after trial, the petitioner was convicted for the offences under Section 279 and 304 (A) of IPC and sentenced to undergo one year simple imprisonment and to pay a fine of Rs. 1000/-, in default, to undergo one month simple imprisonment for the offence under Section 304 (A) of IPC. Since the offence under Section 304 (A) IPC includes the offence under Section 279 IPC, separate sentence not imposed for the offence under Section 279 IPC. Questioning the correctness of the order of conviction and sentence imposed on him, the petitioner has filed Crl.A. No. 39 of 2014 before the learned IV Additional District and Sessions Judge, Coimbatore, and by judgment dated 16.9.2014, the appellate court dismissed the appeal in one line order by confirming the judgment of the trial Court.

2. The case of the prosecution, as could be unfolded from the materials on record, is that on 07.5.2009 at about 10.30 pm, the petitioner was driving the Mini Door Vehicle bearing Registration No. TN 38 S 4635 and when the vehicle was proceeding towards West in Coimbatore to Palakkad Main road, due to the

rash and negligent driving of the petitioner, the vehicle hit on the back side of the stationery lorry bearing Registration No. KL 09 A 8811. Due to the said accident, the occupant of the vehicle, namely, Muthukumar, died on the spot.

3. The matter was adjourned on several occasions at the request of the learned counsel for the petitioner. Today, when the matter is taken up, the learned counsel for the petitioner submitted that he is not willing to argue the matter. In fact, he was left it to the Court for dismissal.

4. On a careful perusal of the entire records, it is seen that the advocate, who appeared on behalf of the petitioner, was not willing to argue the matter before the appellate Court. The petitioner/appellant was also not present before the appellate Court. Therefore, the appellate Court straightaway dismissed the appeal in one line order without giving any reasons. The order of the appellate Court reads thus:-

5. No doubt, the appellate Court was probably not satisfied with the attitude of the advocate, who refused to argue the case whenever it was posted inspite of granting several adjournments. On seeing the attitude of the Advocate before this Court, I am able to understand that the learned Judge, in anguish, has passed the above one line order. Though the accused was directed to surrender, despite several adjournments taken by the counsel, he has not surrendered so far.

6. On 19.6.2015, when the matter is called, there was no representation for the petitioner. Surrender report also not filed. Today, the learned counsel submitted that he is not willing to argue the matter. Since this Court is of the view that the party is suffering because of the act of the counsel and also considering the facts and circumstances of the case, this Court is not inclined to come to a negative conclusion. Fault of an advocate should not be a cause for causing injustice. Further, the party is also taking umbrage under the nuances of law to escape from appearing and surrendering and it should be deprecated. But, Rule of Law and Law should prevail.

7. Though the Advocate was not willing to argue the matter, the Appellate Court ought to have passed the order on merits as per the judgment of the Hon'ble Supreme Court in K.S. Panduranga Vs. State of Karnataka, (2013) 3 AD 414 : AIR 2013 SC 2164 : (2013) 116 CLT 669 : (2013) CriLJ 1665 : (2013) 3 CTC 631 : (2013) 3 JT 514 : (2013) 2 RCR(Criminal) 219 : (2013) 3 SCALE 152 : (2013) 3 SCC 721 : (2013) 1 SCC(L&S) 791 : (2013) AIRSCW 1382 . In the said decision, the Hon'ble Supreme Court held that if the petitioner do not appear, there is no necessity for the Court, which is hearing the matter, to issue warrant for special notice or appoint any Amicus Curiae to argue the matter on behalf of the petitioner. The Court is empowered to deal with the matter on merits and dispose of the same.

8. But in the case on hand, the Appellate Court has straightaway dismissed the petition in one line order without giving adequate reasons, which is per se illegal

and against the judgment of the Hon''ble Supreme Court cited supra.

9. Admittedly, the first appellate Court has got every right to dispose of the case on merits. Since the appellate Court has passed the order in one line simply confirming the judgment of the trial Court, I am of the view that this matter requires consideration on merits. Therefore, without expressing any opinion on merits of the case, this matter is remitted to the appellate Court for fresh consideration. Accordingly, the judgment dated 16.9.2014 passed by the learned IV Additional District and Sessions Court, Coimbatore in CrI.A.No. 39 of 2014 is set aside and the matter is remitted back to the IV Additional District and Sessions Court, Coimbatore for fresh consideration. The appellate Court shall rehear the matter and pass appropriate orders on merits. If the advocate or party does not appear, the Court shall deal with the matter on merits and is empowered to pass orders as per the judgment of the Hon''ble Supreme Court cited supra.

10. In the result, the Criminal Revision Case is allowed. Consequently, connected miscellaneous petitions are closed.