

(2019) 11 KAR CK 0015

In the Karnataka High Court

Case No : Criminal Revision Petition No. 82 Of 2017

Nigappa Madivala

APPELLANT

Vs

State By Mysuru South Police

RESPONDENT

Date of Decision : 18-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 279, 338
Motor Vehicles Act, 1988 — Section 134(A), 134(B), 187
Code Of Criminal Procedure, 1973 — Section 233, 313

Citation : (2019) 11 KAR CK 0015

Hon'ble Judges : K.Somashekar, J

Bench : Single Bench

Advocate : Hemanth Kumar S.R., Thejesh P

Final Decision : Allowed

Judgement

1. This criminal revision petition is directed against the judgment passed by the Court below in Cr.A.No.215/2014 dated 14.10.2016, whereby the appeal came to be dismissed for non-prosecution, by confirming the order of conviction and sentenced rendered by the trial Court in C.C.No.604/2013 dated 1.10.2014, wherein the trial Court convicted the petitioner/accused for the offences punishable under Sections 279 and 338 of IPC and Section 134(A) and(B) r/w Section 187 of the I.M.V. Act. The same has been reflected in the operative portion of the judgment of conviction and order of sentence rendered by the trial Court.

2. Heard the learned counsel for the petitioner and the learned HCGP for the respondent-State.

3. The factual matrix of this petition are as under:

It is stated in the theory of prosecution that on 25.11.2009 at about 2.15 p.m. on Mysuru-Bannur Road, near Vajamangala gate, the petitioner/accused said to be the driver of the KSRTC bearing registration No.KA-09-4172, drove the said

bus in a rash and negligent manner and hit against a moped bearing registration No.KA-55-E-8005, and caused injuries to two persons, who were proceeding on the moped. Hence, a complaint came to be lodged against the driver of the KSRTC bus. Thereafter, the investigating officer conducted investigation and laid charge sheet against the accused/petitioner.

4. In support of its case, the prosecution has examined

9 witnesses as P.Ws. 1 to 9 and got marked 10 documents marked at Exs.P.1 to 10. The statement of the accused under Section 313 Cr.P.C. was recorded. On behalf of the defence neither any witnesses were examined nor were documents produced to prove his case as contemplated under Section 233 of Cr.P.C. Thereafter the trial Court heard the arguments advanced by the prosecution and the defence counsel in C.C.No.604/2013 and found that the accused has committed the offence under Section 279 and 338 of IPC and Section 134(A) and (B) r/w Section 187 of the IMV Act. The same has been revealed in the operative portion of the impugned order rendered by the trial Court.

5. In support of his case, the learned counsel for the petitioner herein has facilitated the judgment of Allahabad High Court in the case of Natu Ram and others Vs. State of U.P. reported in 1990 CRI. L.J. 452, wherein the appeal came to be dismissed and the appeal has been restored by remitting the matter to the trial Court. Therefore, he prays for setting aside the order passed by the Court below in Cr.A.No.215/2014 dated 14.10.2016 and to give an opportunity to the accused to address the argument, otherwise, it would lead to miscarriage of justice, and seeks intervention of this Court in respect of the impugned order passed in CrI.A.No.215/2014, which was dismissed for non- prosecution.

6. Learned HCGP for the respondent-State taken me through the evidence adduced by the prosecution in C.C.No.604/2013 by examining P.Ws 1 to 9 and got marked 10 documents. Based on the evidence, the trial Court convicted the accused/petitioner for the offences punishable under Sections 279 and 338 of IPC and Section 134(A) and (B) r/w Section 187 of the IMV Act. The same has been challenged by the petitioner/accused before the First Appellate Court in CrI.A.No.215/2014, but he did not participate in the proceedings and not even to address arguments. Therefore, the First appellate Court dismissed the appeal for non- prosecution on 14.10.2016. There is no infirmity in the order passed by the first appellate Court. Hence, he prays for dismissal of criminal revision petition preferred by the petitioner/accused by confirming the order conviction and sentence passed by the trial court in C.C.No.604/2013.

7. In the back drop of the contention taken by the learned counsel for the petitioner so also the argument of the learned HCGP is concerned, it is relevant to state that the accused is convicted for the offences punishable under Sections 279 and 338 of IPC and Section 134(A) and (B) r/w Section 187 of the IMV Act in C.C.No.604/2013. There is no dispute that the prosecution has placed evidence by examining 9 witnesses and also got marked 10 documents.

8. But however, in the instant case the appellate court has not given sufficient opportunity to the counsel for the appellant in CrI.A.No.215/2004 even to address arguments regarding his say about the re-appreciation of evidence let in by the prosecution in C.C.No.604/2013 and so also, the documents which were got marked on the part of the prosecution to prove the guilt of the accused. Though the prosecution has examined in all 9 witnesses and got marked several documents, it cannot be said that the same has been appreciated by the Trial Court in a proper perspective to come to a conclusion that the accused has committed an offence as narrated in the complaint, in the charge sheet as well as the evidence adduced by the prosecution. Merely because the trial court has convicted the accused as indicated in C.C.No.604/2013, it cannot be said that the same has been appreciated by the trial court to arrive at right conclusion to convict the accused. But the appellate court has dismissed the case in CrI.A.No.215/2004 without giving an opportunity to address the arguments. Therefore, I am of the opinion that the doctrine of audi alterem partem which is required to be extended to the petitioner herein, being a convicted person in C.C.No.604/2013, has not been followed. Hence, it has resulted in a miscarriage of justice, which ought not to arise in a criminal justice system. Therefore, it is deemed proper to call for interference the impugned order passed by the First appellate court in CrI.A.No.215/2014 and to consequently set- aside the order dated 14.10.2016 , otherwise it will lead to miscarriage of justice to the accused.

Accordingly, for the aforesaid reasons, I proceed to the following:

ORDER

Criminal Revision Petition is allowed. Consequently, the order passed by the Court below in CrI.A.No.215/2014 dated 14.10.2016 is hereby set aside and the matter is remanded to the First Appellate Court. The Trial Judge is directed to dispose of the case on merits within an outer limit of four months from the date of receipt of a copy of this order.