

(2011) 07 MAD CK 0111

In the Madras High Court

Case No : Criminal O.P. No. 3823 and M.P. No. 1 of 2011

Vijay and Others

APPELLANT

Vs

State and R. Nithya

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 313, 314, 317, 482

Citation : (2012) 1 RCR(Criminal) 193 : (2012) 1 RCR(Criminal) 193

Hon'ble Judges : T. Sudanthiram, J

Bench : Single Bench

Advocate : C.P. Palanichamy, for the Appellant; M.F. Shabana, Government Advocate (Crl. Side) for R-1 and C.D. Johnson, for Intervenor, for the Respondent

Final Decision : Dismissed

Judgement

T. Sudanthiram, J.—The Petitioners herein are the accused in C.C. No. 754 of 2006 on the file of the learned Judicial Magistrate,

Tambaram. The second Respondent herein is the de facto complainant, who is the wife of the first Petitioner/first accused.

2. The grievance of the Petitioners/accused is that after completion of the trial and examination of prosecution witnesses, the accused were

questioned u/s 313 of Code of Criminal Procedure, on 02.08.2010 and thereafter, the case was posted for defence. On behalf of the accused,

arguments were advanced and written arguments were also filed by the accused on 04.01.2011. The further grievance of the Petitioners is that

they filed the written arguments on 04.01.2011. But, the learned Magistrate had posted the case to 29.01.2011 for defence witnesses without

taking note of the written arguments filed by the Petitioners. In the meantime, on 29.01.2011, the Presiding Officer was transferred and the case

was posted to 04.02.2011. The new Presiding Officer, who took charge, was on casual leave on 04.02.2011. Therefore, the case was posted to

07.02.2011 for defence witnesses. On 07.02.2011, the new Presiding Officer, without hearing the arguments of the defence, posted the case

simply for judgment on 09.02.2011. But, on 09.02.2011, the first accused alone was present and an application u/s 317 Code of Criminal

Procedure was filed on behalf of the accused 2 to 5 and the said application was dismissed by the learned Magistrate and the case was split up.

The first accused was convicted and with regard to imposing sentence, the case was adjourned to 11.02.2011.

3. The learned Counsel appearing for the Petitioners/accused submits that gross injustice has been caused to the accused by posting the case for

judgment without hearing the oral arguments of the counsel for the accused. It is further submitted by the learned Counsel for the Petitioners that

the learned Magistrate has acted in a hurried manner.

4. Heard the learned Government Advocate (Crl. Side). She has submitted that prima facie the procedure adopted by the learned Judicial

Magistrate, Tambaram, is not proper.

5. The learned Counsel for the intervenor submits that after the first Petitioner being convicted, he cannot challenge the conviction by way of 482

Code of Criminal Procedure and he should only prefer an appeal against the said conviction.

6. This Court has considered the submissions made by the learned Counsel on either side and perused the records.

7. Admittedly, the Presiding Officer by name Mr. Jeevanantham, learned Judicial Magistrate, Tambaram, after taking charge, the case came up for

hearing before him for the first time on 07.02.2011. As per the case diary, the case was posted only for defence witnesses on 29.01.2011 and on

04.02.2011. But, on 04.02.2011, since such Judicial Officer was on casual leave, the case was posted to 07.02.2011.

8. The entry made on 04.02.2011 is as follows:

J.O. on C.L. A2 present. Other accused absent. 317 Code of Criminal Procedure filed DW. Call on 07.02.2011.

As per this entry made, since the Presiding Officer was on casual leave on 04.02.2011, the case was adjourned to 07.02.2011 only for defence

witnesses.

9. The entry made on 07.02.2011 is as follows:

A1 present. Other Accused absent. 317 filed. Written arguments filed. Perusal of records and judgment by 09.02.2011.

As per this entry made, the new Presiding Officer has not heard the oral arguments of the accused.

10. Section 314 of Code of Criminal Procedure reads as follows:

S.314. Oral arguments and memorandum of arguments.-(1) Any party to a proceeding may, as soon as may be, after the close of his evidence,

address concise oral arguments, and may, before he concludes the oral arguments, if any, submit a memorandum to the Court setting forth

concisely and under distinct headings, the arguments in support of his case and every such memorandum shall form part of the record.

(2) A copy of every such memorandum shall be simultaneously furnished to the opposite party.

(3) No adjournment of the proceedings shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded

in writing, considers it necessary to grant such adjournment.

(4) The Court may, if it is of opinion that the oral arguments are not concise or relevant, regulate such arguments.

11. As per Section 314 of Code of Criminal Procedure, the oral arguments are mandatory and the written arguments could be filed in support of

the oral arguments before concluding it. Therefore, it is the duty of the Court to hear the oral arguments. But, the learned Magistrate did not follow

the said procedure.

12. In the docket entry made on 09.02.2011, it is mentioned that the first accused alone was present. On behalf of the accused 2 to 5, an

application u/s 317 Code of Criminal Procedure was filed and arguments were heard in respect of that Petitioners and as the judgment was to be

pronounced the petition was dismissed and non-bailable warrant was issued against accused 2 to 5 and case was split up. Thereafter, on the very

same day, the judgment was pronounced against the first accused. This Court is unable to accept the procedure adopted by the learned

Magistrate. When the case was posted for judgment for all the accused how could judgment be pronounced in respect of only one accused.

13. In fact, one more docket entry is made by the learned Magistrate on 09.02.2011 stating that Mr. Silambu Selvan, learned Counsel appearing for the accused had objected the dismissal of Section 317 application by saying that sufficient opportunity has not been given to the accused. It was also contended by the said learned Counsel for the accused that on humanitarian consideration, an opportunity must be given to the accused and a request was also made by the learned Counsel for the accused that an opportunity has to be given to the accused and the case has to be adjourned to some other date. When such a request was made by the learned Counsel for the accused, other counsel including the learned Assistant Public Prosecutor were present.

14. It is apparent that no opportunity was given to the learned Counsel for the accused to make the oral arguments and judgment was pronounced.

Though, normally after the conviction being passed against the accused and sentence being imposed only an appeal or revision should be preferred

by the accused and such conviction cannot be challenged before the High Court u/s 482 Code of Criminal Procedure But, in this case, as a special

circumstances, though the learned Magistrate had pronounced the judgment convicting the first accused, but no sentence being imposed as this

Court feels that the procedure adopted by the learned Magistrate is against the law and procedure contemplated under the Code of Criminal

Procedure and gross injustice has been caused to the first accused violating Article 21 of the Constitution of India, the application u/s 482 of Code

of Criminal Procedure is maintainable. The judgment rendered by the learned Judicial Magistrate, Tambaram, is not sustainable. In the said

circumstances, the judgment rendered by the learned Judicial Magistrate, Tambaram, on 09.02.2011 in C.C. No. 754 of 2006 is set aside.

15. It is brought to the notice of this Court that the same Presiding Officer is still continuing. In the said circumstance, the case must be transferred

to some other Court. Therefore, the case in C.C. No. 754 of 2006 is transferred from the file of the learned Judicial Magistrate, Tambaram, to the

learned Judicial Magistrate No. I, Chengalpattu. The learned Judicial Magistrate No. I, Chengalpattu, is directed to give an opportunity to the

accused and permit the counsel for the accused to submit oral arguments. The spilt up case in C.C. No. 57 of 2011 also must be transferred along

with C.C. No. 754 of 2006 and they must be clubbed together. The Criminal Original Petition is ordered accordingly. Consequently, the connected miscellaneous petition is closed.