

(2015) 11 KL CK 0029

High Court Of Kerala

Case No: Criminal M.C. No. 6041 of 2015

Lalu Thomas

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: Nov. 9, 2015

Acts Referred:

- Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 - Section 24, 6(b)
- Criminal Procedure Code, 1973 (CrPC) - Section 482

Citation: (2016) 1 KHC 300 : (2016) 1 KLJ 427

Hon'ble Judges: K. Ramakrishnan, J.

Bench: Single Bench

Advocate: N.G. Sindhu and Jolly James, Advocates, for the Appellant; Seena Ramakrishnan, Public Prosecutor, for the Respondent

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

K. Ramakrishnan, J.

This is an application filed by the petitioner to set aside Annexure A2 and A3 orders under Section 482 of the Code of Criminal Procedure(hereinafter referred to as the Code).

2. It is alleged in the petition that petitioner is the accused/appellant in C.C. No. 1139/2013 on the file of the Judicial First Class Magistrate Court-1 Kanjirapappally alleging offences under Section 6(b) read with Section 24 of the Cigarettes and other Tobacco Products (Prohibition, Supply and Distribution) Act, 2003 (hereinafter called as COPTA Act) and Section 118(i) of Kerala Police Act.

3. The case of the prosecution was that on 25.6.2013 at about 6.30 pm, the petitioner was found to be illegal in possession of prohibited tobacco articles for sale in a shop situated at Mundakkayam.
4. After investigation, final report was filed before the Judicial First Class Magistrate's Court-I, Kanjirappally where it was taken on file as CC No. 1139/2013. Petitioner appeared and filed CrI. M.P. 4465/2014 for discharge and the learned Magistrate by Annexure A1 order dismissed the application against which the petitioner filed CrI. R.P. 36/2014 before the Sessions Court, Kottayam which was made over to Additional Sessions Court-II, Kottayam for disposal. The counsel for the petitioner did not appear on 18.2.2015 and so the learned Additional Sessions Judge dismissed the revision for default and Annexure A2 order. The petitioner filed CrI. M.P. No. 584/2015 to recall the order but the same was dismissed by the Additional Sessions Judge by Annexure A3 order. Aggrieved by the same, present petition has been filed by the petitioner/accused in the lower court.
5. Heard the counsel for the petitioner Smt. Sindu N.J. and Smt. Seena Ramakrishnan learned Public Prosecutor appearing for the State.
6. The grievance of the petitioner is that the revision was dismissed by the lower court for default and though an application has been filed to recall that order, that was also dismissed and thereby an opportunity of hearing the revision on merit has been denied to the petitioner. According to the counsel for the petitioner, the order passed by the court below is illegal and warrants interference at the hands of this Court under Section 482 of the Code.
7. The learned Public Prosecutor submitted that there is no illegality in the order.
8. It is seen from the allegations in the petition that petitioner was charge sheeted by the Sub Inspector of Police, Mundakkayam alleging offences under Section 6(b) read with Section 34 of the COPTA Act and under Section 118(i) of Kerala Police Act and it was taken on file as CC No. 1139/2013 on the file of the Judicial First Class Magistrate Court-I Kanjirappally. Petitioner appeared and filed CrI. M.P. 4465/2014 for discharge and that petition was dismissed by the learned Magistrate by Annexure-A1 order. Aggrieved by the same, he filed CrI. R.P. 36/2014 before the Sessions Court, Kottayam and it was admitted to file and it was made over to Additional Sessions Court-II (Special) Kottayam for disposal. Since the counsel for the petitioner did not appear, the learned Additional Sessions Judge by Annexure-A2 order dismissed the revision for non prosecution. Thereafter, the petitioner filed CrI. M.P. 584/2015 before that court to recall the order and that petition was dismissed by the Additional Sessions Judge by Annexure A3 order. Now the petitioner is challenging both the orders passed by the court below.
9. As regards Annexure A3 order concerned, there is no illegality committed by the court below in dismissing the application to recall the earlier order as that court has no power to recall the order invoking power under Section 482 of the Code and that

will amount to review the order passed which is not permissible under law. So the court below was perfectly justified in passing Annexure A3 order which does not warrant any interference at the hands of this court.

10. Once the revision has been admitted then court has no power to dismiss the revision for default. The legality of the order passed has to be gone into by the revisional court, once it is brought to the notice of the court either suo moto or by a petition filed by the aggrieved party, alleging some illegality and impropriety in the proceedings under challenge in the court and pass appropriate orders on merit. So the court below was not justified in dismissing the revision for default by Annexure A2 Order.

11. The question whether the revision can be dismissed for default due to non-appearance of party was considered by the Apex Court in [Madan Lal Kapoor Vs. Rajiv Thapar and Others](#), and held that it is not permissible and rule laid by Supreme Court that criminal appeal cannot be dismissed for default also applies to criminal revision as well. The same view has been reiterated in the decision reported in [Satin Chandra Pegu Vs. State of Assam](#), .

12. It is clear from the above decision that once the revision is admitted, then the court has to dispose of the same on merit and it cannot be dismissed for default due to non-appearance of parties or court. If it is done so, it is illegal and the same is liable to be set aside. So the Court below has committed the illegality in dismissing the revision for default and the court below should have disposed of the revision on merit though the counsel for the revision petitioner failed to appear and prosecute the same. So Annexure A2 order passed by the court below has to be set aside and the same has to be remitted to court below for fresh disposal in accordance with law.

So the petition is allowed in part and Annexure A2 order passed by the Additional Sessions Judge-II (Special) Kottayam, dismissing the CrI. R.P. No. 36/2014 for default is set aside and the matter is remitted to the court below for fresh disposal in accordance with law. The lower court is directed to take the same and give an opportunity of hearing of the submission on merit for the petitioner then dispose of the same afresh on merit in accordance with law. The petitioner is directed to appear before the court below on 30.11.2015.

Office is directed to communicate this order to the concerned court immediately.