



Citation : CDJ 2008 MHC 6320

Court : Before the Madurai Bench of Madras High Court

Case No : W.P(MD).No. 4472 of 2008 & M.P(MD)No. 1 of 2008

Judges : THE HONOURABLE MR. JUSTICE P.K. MISRA

Parties : Ratanlal Bakshomal Kundnani Versus The Superintendent (Copy Section), District and Sessions Court, Srivilliputtur, Virudhunagar District

Appearing Advocates : For the Petitioner: G.R. Swaminathan, Advocate. For the Respondent: Senthur Pandian, Additional Public Prosecutor.

Date of Judgment : 08-05-2008

Head Note :

Constitution of India - Article 226 -

Judgment :

(Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records relating to the endorsement on return dated 30.04.2008 made by the respondent on the copy application No.1017 filed by the petitioner seeking certified copy of the common judgment in Crl.A.Nos.195, 196 and 197 of 2007 and quash the same and consequently, direct the respondent to issue certified copy of the common judgment in Crl.A.Nos.195, 196 and 197 of 2007.)

This petition has been filed to issue a writ of Certiorarified Mandamus calling for the records relating to the endorsement on return dated 30.04.2008 made by the respondent on the copy application No.1017 filed by the petitioner seeking certified copy of the common judgment in Crl.A.Nos.195, 196 and 197 of 2007 and quash the same and consequently, direct the respondent to issue certified copy of the common judgment in Crl.A.Nos.195, 196 and 197 of 2007.

2. The petitioner is an accused in C.C.Nos.73, 74 and 75 of 2003 on the file of the learned Judicial Magistrate, Sivakasi. After the order of conviction, the petitioner had filed Crl.A.Nos.195, 196 and 197 of 2007 before the learned Principal Sessions Judge, Srivilliputtur, Virudhunagar District and by a common judgment dated 25.04.2008, the appeals were dismissed. The petitioner who was released on bail, was represented by his advocate. Since the petitioner himself was absent, free copy of the common judgment was not made available.

3. It appears that subsequently the appellate Court has issued direction to the trial Court to issue warrant as against the petitioner.

4. Be that as it may, subsequently the petitioner filed an application for issuance of the certified copy of the said common judgment. The respondent has returned such application by making the following

endorsement:

"Returned:

The accused was not appeared on the date of Judgment. Judgment was pronounced without his presence. Hence he is not entitled to receive certified copy. Hence returned."

5. The petitioner has filed this present writ petition for quashing such order passed by the respondent and for issuing direction to the respondent to issue certified copy of the common judgment passed in CrI.A.Nos.195, 196 and 197 of 2007.

6. I have heard Mr.G.R.Swaminathan, learned Counsel for the petitioner and Mr.Senthur Pandian, learned Additional Public Prosecutor for the respondent.

7. The learned Additional Public Prosecutor for the respondent submitted that the petitioner has an alternative remedy of filing an application under Section 482 of the Code of Criminal Procedure and therefore, the present writ petition need not be entertained.

8. According to me, this submission makes no sense as the difference only appears to be one between tweedledum and tweedledee as the person has approached the very same High Court. I therefore failed to understand as to why an application under Article 226 of the Constitution of India cannot be entertained.

9. Be that as it may, even such application under Article 226 of the Constitution of India can always be treated as the one under Section 482 of the Code of Criminal Procedure. This objection raised by the learned Additional Public Prosecutor is merely technical rather than of any substance.

10. So far the merit of this application is concerned, there is no justification for the respondent to refuse to issue a certified copy of the common judgment merely on the ground that the petitioner had not appeared on the date of pronouncement of the common judgment. There is no law which obliges an appellant to remain present at the time of the pronouncement of the judgment, more particularly, when such appellant was represented by his counsel.

11. The learned Counsel for the petitioner has brought to my notice a recent decision of this Court in Markandan v. Inspector of Police, Deevattipatti P.S reported in (2007) 1 MLJ (CrI) 210 wherein it is stated that for filing revision, it is not necessary to file a surrender certificate. At any rate, the question as to whether the petitioner can be permitted to file a revision without filing a surrender certificate is a matter for the concerned revisional Court.

12. In the present case, the certified copy was not made available. In the absence of any justification whatsoever, the endorsement made by the respondent is quashed and the respondent is directed to issue a certified copy of the common judgment passed in CrI.A.Nos.195, 196 and 197 of 2007, as expeditiously as possible preferably within a period of ten days from the date of receipt of a copy of the present order.

13. The original copy application which was filed by the petitioner in the lower Court shall be returned to the petitioner, so that the same can be represented before the respondent. While indicating the period of copy application under Section 12 of the Limitation Act, the date of original presentation should be considered and the entire period should be counted as the period required for preparing the copy.

14. In the result, the writ petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

15. This order shall be circulated to all the lower Courts in the State to avoid similar grievances in future.

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