

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 809/2021
(Arising out of SLP(Cr1.) No. 5690/2021)
(@ Diary No. 8150/2021)

K. MURUGANANDAM & ORS. ...APPELLANT(S)

VERSUS

STATE REP. BY THE DEPUTY
SUPERINTENDENT OF POLICE & ANR. ...RESPONDENT(S)

O R D E R

1. Delay condoned.
2. Leave granted.
3. Heard learned counsel for the parties.
4. This appeal takes exception to the judgment and order dated 16.02.2018 passed by the High Court of Judicature at Madras in Criminal Appeal No.246/2012.
5. When the appeal came up for hearing on 08.07.2021, this Court passed the following order:

"There is a delay of 1040 days in filing the special leave petition.

On perusal of the impugned order, it appears that the High Court disposed of the criminal appeal for non prosecution because of non appearance of the counsel for the petitioners. In such a situation, the High Court is expected to nominate an *Amicus*

Curiae; and after taking assistance of *Amicus Curiae* proceed with the hearing of the matter.

On this count alone, the impugned order of non prosecution is unsustainable.

Nevertheless, before we remand the criminal appeal back to the High Court for considering it afresh while taking note of the submission made by counsel for the respondents that the petitioners have intentionally avoided to appear when the appeal was called out for hearing on different dates, we direct the petitioners to first surrender and produce surrender certificate. Thereafter the appeal will be remitted back to the High Court for consideration on its own merits.

The petitioners shall surrender within four weeks from today and produce surrender proof in the Registry within the same time, failing which this Court may discuss the petition for not abiding the direction to surrender given by this Court.

List the matter on 12th August, 2021."

6. As all the appellants have surrendered and surrender proof has been produced on record, the counsel for the appellants was permitted to address on merits of the case.

7. The High Court *vide* impugned judgment and order summarily dismissed the appeal preferred by the appellants *vide* following order:

"When the matter was taken up for hearing on 15.02.2018, there was no representation for the appellant and hence, the case was directed to be listed under the caption for dismissal on 16.02.2018. Even today,

(16.02.2018), there is no representation on behalf of the appellant either in person or through the learned counsel on record. Therefore, the criminal appeal is dismissed for non prosecution.

8. It is well settled that if the accused does not appear through counsel appointed by him/her, the Court is obliged to proceed with the hearing of the case only after appointing an *amicus curiae*, but cannot dismiss the appeal merely because of non-representation or default of the advocate for the accused (see *Kabira vs. State of Uttar Pradesh*¹ and *Mohd. Sukur Ali vs. State of Assam*²).

9. Accordingly, we have no hesitation in setting aside the impugned judgment and order and relegate the parties before the High Court for hearing of Criminal Appeal No. 246/2012 afresh on its own merits and in accordance with law.

10. The parties to appear before the High Court on 31.08.2021, when the Court may proceed to hear the appeal or pass such other appropriate order as may be necessary.

11. All contentions available to both sides in the remanded appeal are left open.

12. If the appeal cannot proceed for hearing

1 1981 (Supp) SCC 76

2 (2011) 4 SCC 729

expeditiously, it is open to the appellants to make a formal application for bail, which can be considered by the High Court on its own merits.

13. The appeal and pending applications are disposed of accordingly.

....., J.
(A.M. KHANWILKAR)

....., J.
(SANJIV KHANNA)

NEW DELHI;
AUGUST 12, 2021.

ITEM NO.4 Court 3 (Video Conferencing) SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 8150/2021

(Arising out of impugned final judgment and order dated 16-02-2018 in CRLA No. 246/2012 passed by the High Court of Judicature at Madras)

K. MURUGANANDAM & ORS. Petitioner(s)

VERSUS

STATE REP. BY THE DEPUTY SUPERINTENDENT OF POLICE & ANR. Respondent(s)

(IA No.44821/2021-CONDONATION OF DELAY IN FILING and IA No.44818/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.44823/2021-EXEMPTION FROM FILING O.T. and IA No.44817/2021-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 12-08-2021 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s) Ms. T. Archana, AOR

For Respondent(s) Dr. Joseph Aristotle S., AOR
Mr. Saaketh Kasibhatla, Adv.
Ms. Preeti Singh, Adv.

Mr. Rahul Shyam Bhandari, AOR

UPON hearing the counsel the Court made the following
O R D E R

It appears that petitioner no. 7 has not surrendered so far. The reason mentioned by the learned counsel for the petitioner is that presently she is undergoing medical treatment. Two weeks' time for surrender is prayed on her behalf.

Accordingly, the matter be listed after two weeks.

Liberty to apply is granted, if the surrender certificate is filed at an earlier point of time.

xxx

xxx

xxx

Later on, with the permission of the Court, the matter was mentioned at 2 0' clock with a request to take up the matter for immediate hearing.

Counsel for the petitioners informed us that due to some miscommunication, a statement was made in the morning session that petitioner no. 7 has still not surrendered.

On instructions and from the record, as made available, it is noticed that all petitioners have surrendered in terms of order dated 08.07.2021.

Accordingly, with the consent of the counsel appearing for both sides, we proceed to hear the matter forthwith.

Delay condoned.

Leave granted.

The appeal and pending applications are disposed of in terms of the signed order.

(NEETU KHAJURIA)
COURT MASTER

(VIDYA NEGI)
COURT MASTER

(Signed order is placed on the file.)