

**THE HON'BLE SRI JUSTICE M.S.K. JAISWAL**

**Criminal Revision Case No. 429 of 2013**

**Order:**

This Criminal Revision Case is directed against the orders, dated 12.10.2012, passed in Criminal Appeal No. 352 of 2011 by the VIII Additional Sessions Judge (Fast Track Court), Rajahmundry, East Godavari District, whereby and whereunder the learned Sessions Judge has allowed the appeal, filed by the *de facto* complainant against the acquittal order passed by the learned Judicial Magistrate of First Class, Anaparthi, in CC No.207 of 2010, dated 10.06.2011, and remanded the matter to the lower Court for fresh disposal.

2. The facts, in brief, are as follows. The second respondent herein filed a private complaint against the petitioners/accused alleging the offences punishable under Sections 324, 506, 509 read with 34 IPC. The case was taken cognizance of and numbered as CC No.207 of 2010 on the file of the Judicial Magistrate of First Class, Anaparthi. It appears that summons were ordered to be sent to the petitioners/accused, however, on 10.06.2011, it was noticed that neither the complainant was present nor he paid the batta for summons to be sent to the petitioners/accused, therefore, the learned Magistrate has dismissed the complaint and acquitted the petitioners/accused under Section 256 Cr.P.C. Aggrieved by the said acquittal, the *de facto* complainant/second respondent herein has preferred Criminal Appeal No.352 of 2011 on the file of VIII Additional Sessions Judge (Fast Track Court), Rajahmundry, East Godavari District, and, by the impugned judgment, dated 12.10.2012, , the learned Sessions Judge has set aside the said acquittal order and remanded the matter to the lower Court with a direction to dispose of the case on merits after giving opportunity to both the parties. Aggrieved by the said orders, the present revision is filed by the

petitioners/accused contending that the very order of remand passed by the learned Sessions Judge is contrary to law and that the appeal itself is not maintainable.

3. Learned counsel for the petitioners/accused submitted that the right of preferring an appeal against the acquittal has been conferred on the *de facto* complainant in addition to the right of the State to prefer the appeal only by virtue of the amendment to Section 372 Cr.P.C, which came into force with effect from 31.12.2009 and, since the offence in the instant case is alleged to have taken place on 16.09.2002, the appeal preferred by the *de facto* complainant before the Sessions Court questioning the acquittal is not maintainable and in support of the said contention, he relied on a decision of the Division Bench of this Court reported in **D. Sudhakar v. Panapu Sreenivasulu @ Evone Water Sreenivasulu**<sup>[1]</sup>.

4. On the other hand, learned counsel appearing for the second respondent – *de facto* complainant submitted that the conduct of the petitioners/accused shows that all along from 2002 till date they have been protracting the case and, even on the date, when the complaint came to be dismissed, the petitioners/accused were absent, so also the *de facto* complainant, but however, it is the contention of the *de facto* complainant that he was very much present in the Court, but was waiting at the threshold and his name was not called, but, subsequently, on enquiry he came to know that his complaint was called and, in view of his absence, the same was dismissed. He submits that in view of the above, the order of the learned Sessions Judge cannot be found fault with.

5. It is no doubt true that the order passed by the learned Magistrate on 10.06.2011 is a default order, whereunder, due to the absence of the complainant and for non-depositing of batta for some of the accused, the learned Magistrate has dismissed the complaint under

Section 256 Cr.P.C and, consequently, acquitted the petitioners/accused. Once the accused were acquitted, the only remedy available is to prefer an appeal either before the High Court or before the Court of Session as per the provisions of the Code of Criminal Procedure. Till 31.12.2009, such remedy was conferred on the State, however, by way of amendment to Section 372 Cr.P.C., which came into force with effect from 31.12.2009, that right has also been extended to the *de facto* complainant and the jurisdiction has been conferred both on the Sessions Court as well as High Court. Therefore, for the incident which took place on 16.09.2002 the provisions of the amended Cr.P.C., cannot be extended to the *de facto* complainant. The Division Bench of this Court in **D. Sudhakar's** case (1 supra) has clearly held that the amended provision is prospective in operation but not retrospective. In the instant case, since the incident took place on 16.09.2002 and amendment to Section 372 Cr.P.C giving right to victim to prefer appeal against acquittal came into force with effect from 31.12.2009, the benefit did not accrue to the *de facto* complainant to question the order of acquittal passed by the learned Magistrate. Therefore, I am of the considered view that first of all the learned Sessions Judge is not correct in entertaining the appeal and, thereafter, remanding the matter to the learned Magistrate for fresh disposal.

6. Having regard to the facts and circumstances of the case, the Criminal Revision Case is allowed and the impugned order, dated 12.10.2012, passed in Criminal Appeal No. 352 of 2011 by the VIII Additional Sessions Judge (Fast Track Court), Rajahmundry, East Godavari District, is hereby set aside.

7. As a sequel thereto, the miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

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**M.S.K. JAISWAL, J.**

Date: 07.07.2015

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[\[1\]](#) 2013(1) ALD (CrI.) 366(AP)