

HONOURABLE SRI JUSTICE RAJA ELANGO

Criminal Revision Case No.1435 of 2015

ORDER:

The Petitioners filed this Criminal Revision Case by invoking the provisions under Sections 397 and 401 of the Criminal Procedure Code challenging the observation made by the lower appellate Court in the common judgment dated 16-06-2015 in Criminal Appeal No.43 of 2010 and Criminal Appeal No.9 of 2014.

The relevant portion of the paragraph 28 of the impugned common judgment reads as follows :

“In the result, the conviction and judgment passed by the trial Court in C.C.No.701 of 2009, dated 17-03-2010 is hereby set aside and the case against which both Crl.A.No.43 of 2010 and Crl.A.No.9 of 2014 are filed is remitted back to the trial court for fresh disposal according to law by giving opportunity to both parties in all aspects.

The lower Court is directed to decide the matter afresh by considering the entire evidence on record and give finding against all the accused in accordance with the evidence on record with utmost expedience and in any event within six months from the date of receipt of the case record, without considering any observation made by this Court in deciding the Appeals.”

The main grievance of the petitioners herein is that in the first part of the paragraph 28, the lower appellate Court directed to conduct a fresh trial and to pass appropriate orders, whereas in the second part of the

paragraph, it is stated that the trial Court is directed to consider the earlier evidence on record and to pass appropriate orders, which is contrary to law.

This Court is of the view that when the first part of the paragraph has given right for fresh trial, there is no need of second part of the paragraph, which necessitate the trial Court only to consider the evidence on record, which is already recorded by the trial Court.

Hence, the Criminal Revision Case is disposed of with the following directions :

The second part of the paragraph 28 i.e., "The lower Court is directed to decide the matter afresh by considering the entire evidence on record and give finding against all the accused in accordance with the evidence on record" is hereby set aside and the trial Court is directed to proceed as per the direction given by the lower appellate Court as follows :

In the result, the conviction and judgment passed by the trial Court in C.C. No.701 of 2009, dated 17-03-2010 is hereby set aside and the case against which both CrI.A.No.43 of 2010 and CrI.A.No.9 of 2014 are filed is remitted back to the trial Court for fresh disposal according to law by giving opportunity to both parties in all aspects, with utmost expedience and in any event within six months from the date of receipt of the case record, without

considering any observation made by the court in deciding the appeals.

Accordingly, the Criminal Revision Case is disposed of.

Miscellaneous petitions filed in this revision, if any, shall stand closed.

RAJA ELANGO, J

27th July, 2015
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