

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.17274 of 2016

ORDER:

The petitioners are the accused Nos.2 to 4 and 7 in S.C. No.337 of 2005 on the file of the Assistant Sessions Judge, Asifabad (for short 'the trial Court') convicted them for the offences punishable 395 IPC and Section 27 of Indian Arms Act and sentenced to undergo rigorous imprisonment for a period of five years each with fine of Rs.100/- each and in default of payment of fine, the accused shall suffer simple imprisonment for a period of three months. Impugning the same, they maintained the Criminal Appeal No.172 of 2016 before the Special Judge for Trial of Offences under SCs & STs (POA) Act-cum-V Additional District & Sessions Judge, Adilabad. The appeal was admitted and when the matter was made over for hearing, they sought for suspension of sentence in CrI.M.P. No.533 of 2016 and the same was dismissed vide impugned order dated 23.12.2016.

2) The impugned order shows that the learned public prosecutor opposed the suspension of sentence contesting that there is a prima facie case proved against them and that they are convicted by considering the evidence and there are no grounds to suspend the sentence. The learned Judge observed therefrom that even the accused persons were on the concession of bail prior to the conviction judgment, he is not inclined to suspend the sentence.

3) The law is fairly settled in saying the trial Court's judgment of conviction with finding of guilt itself is not a ground not to suspend the sentence pending appeal but for to consider the antecedents and possibility of jumping bail and may not face the appeal proceedings etc., and once there is no basis or material of accused earlier jumped bail or possibility of jumping bail, suspension of sentence pending appeal is a normal course. The expression of the Apex Court in *Angana and another vs State of Rajasthan*¹ states the same.

4) Having regard to the above, the impugned order dated 23.12.2016 in Cr.M.P. No.533 of 2016 in CrI.A. No.172 of 2016 in S.C. No.337 of 2005 on the file of Assistant Sessions Judge, Asifabad is set-aside and the sentence of imprisonment of five years with fine and default sentence passed by the trial Court is hereby suspended, subject to petitioners/ accused Nos.2 to 4 and 7 executing self bonds for Rs.25,000/- (Rupees twenty five thousand only) each with two sureties for a like sum each to the satisfaction of the learned Assistant Sessions Judge, Asifabad.

5) Accordingly and in the result, the Criminal Petition is allowed.

Dr. B.SIVA SANKARA RAO J,

Date:30.12.2016
knl

¹ 2009 (1) ALD CrI. 689 SC

