

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.3012 of 2016

ORDER:

This criminal revision case is filed under Sections 397 and 401 Cr.P.C., challenging the observations made in common judgment dated 29.9.2014 in Criminal Appeal No.93 of 2004 on the file of the Court of Judge, Family Court-cum-III Additional District and Sessions Judge, Vizianagaram.

2. The relevant paragraph Nos.27 and 28 in the judgment read as follows:

27. All the above circumstances, clearly reveals that there is infirmity in awarding sentence not in accordance with the law and no appreciation and the judgment is materially effected. Over all, it is a fit case to remitting back the matter to the trial court for hearing and disposal according to law, by giving opportunity to both parties in all respects.

28. In the result Criminal Appeal No.93 of 2004 filed by the Appellants (Accused Nos.1, 5, 7, 12, 13 and 14); Criminal Appeal No.94 of 2004 filed by the Appellants (Accused Nos.2, 3 and 10); and Criminal Revision Petition No.39 of 2002 filed by P.W.1 are allowed setting aside the judgment of conviction and sentence imposed upon them by the Judgment dated 25.06.2004 in Sessions Case No.7 of 2001 on the file of the Assistant Sessions Judge's Court, Vizianagaram, by remitting the Sessions Case No.7 of 2001 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 appellants/A1, A2, A3, A5, A7, A10, A12, A13 and A14 are directed to appear before the lower court on 05.11.2014 and the remaining respondents/accused are directed to appear before the lower court after receipt of summons, and further the lower court shall fix date to proceed with the matter, according to law by giving opportunity to both sides, in all aspects.

3. The grievance of the petitioners is that the contents of second part of paragraph No.28 is contradictory to the contents of paragraph No.27 and first part of paragraph No.28. As rightly

pointed out by the learned counsel for the petitioners, in the second part of paragraph No.28, there is a direction to decide the matter afresh by considering the entire evidence on record, and in paragraph No.27 and first part of paragraph No.28, there is a direction to hear and dispose of the matter according to law, by giving opportunity to both parties in all aspects.

4. The learned counsel for the petitioners submitted in the similar set of facts, this Court allowed Criminal Revision Case No.1435 of 2015, dated 27.7.2015.

5. Having regard to the facts of the case and the order in CrI.R.C. No.1435 of 2015, the conviction and judgment dated 25.6.2004 passed against the petitioners-A1, A5, A7, A12, A13 and A14 in S.C.No.7 of 2001 on the file of the Court of Assistant Sessions Judge, Vizianagaram are hereby set aside. Criminal Appeal No.93 of 2004 is remitted to the trial court for fresh disposal in accordance with law, after giving reasonable opportunity to both parties in all respects.

6. With the above directions, the criminal revision case is allowed. Miscellaneous petitions, if any pending in this criminal revision case shall stand closed.

T.SUNIL CHOWDARY, J

December 01, 2016.

NOTE:

1. Annex copy of order in CrI.R.C.No.1435 of 2015, dated 27.7.2015.

2. Dispatch order copy by 05.12.2016.

(By order)

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