

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2575 of 2017

JUDGMENT:

Heard Sri N. Srihari, learned counsel for the petitioners/accused Nos.1 to 3, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

2. The present Criminal Revision Case is disposed of at the admission stage itself.

3. The learned counsel for the petitioners would submit that the lower Appellate Court i.e., the learned Judge, Family Court-cum-XII Additional Sessions Judge, Guntur, ought not to have dismissed the Criminal Appeal No.71 of 2014 for default.

4. The learned counsel would submit that the petitioners/accused Nos.1 to 3 were convicted under Section 248 (2) of Cr.P.C. for the charge under Section 498-A of Indian Penal Code (I.P.C.) and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.500/- each, with default sentence to undergo simple imprisonment for a period of one month each by judgment dated 24.02.2014 in C.C. No.562 of 2011 passed by the learned IV-Additional Junior Civil Judge, Guntur.

5. The learned lower Appellate Court dismissed the Criminal Appeal observing thus:

“On service of notice to the prosecution, this appeal has been coming for hearing from time to time. Pending hearing at the stage of appearance of de facto complainant and P.W.1, the appeal was once referred to Lok Adalat for settlement. As there was no progress and settlement, the records are returned and was coming up for hearing, the appellants, who are accused Nos.1 to 3 have been called absent consecutively since 31.05.2017 and no representation on their behalf. Finally, on 22.08.2017 case was posted occasionally to this date i.e., on 29.08.2017. Today i.e., on 29.08.2017 the appellants again are called absent and no representation for them despite of conditionally. Hence the appeal is dismissed for default, accordingly conviction and sentence orders passed by the trial Court i.e., IV-Additional Junior Civil Judge, Guntur in C.C. No.562/2011, dated 24.02.2014 is hereby confirmed.

In the result, the appeal is dismissed for default confirming the conviction and sentence passed by the trial Court i.e., IV-Additional Junior Civil Judge, Guntur in C.C. No.562/2011, dated 24.02.2014. The IV-Additional Junior Civil Judge, Guntur is directed to take steps for implementation of conviction and sentence orders passed in C.C. No.562 of 2011.”

6. The learned lower Appellate Court ought not to have just dismissed the appeal for default as the law declared by the Hon’ble Apex Court **Parasuram Patel and Another v. State of Orissa**¹ is to the effect that in case the parties do not appear, the appellate Court is duty-bound to dispose of the appeal on merits.

7. When the revision petitioners were sentenced to undergo rigorous imprisonment for one year by the learned IV-Additional Junior Civil Judge, Guntur, besides ordering to pay fine of Rs.500/- each, dismissal of Criminal Appeal on the ground that they did not

¹ (1994) 4 SCC 664

enter appearance would cause great injustice to them as there is no other alternative except to undergo rigorous imprisonment in case the present Criminal Revision Case is dismissed.

8. Therefore, the Criminal Revision Case is allowed setting aside the judgment under challenge, with a direction to the learned Judge, Family Court-cum-Additional Sessions Judge, Guntur, to dispose of the Criminal Appeal No.71 of 2014 afresh within six months from the date of receipt of a copy of the order. Correspondingly, a direction has to be given to the revision petitioners herein to appear before the learned Judge, Family Court-cum-Additional Sessions Judge, Guntur, on 29.12.2017, and they shall continue to appear, as and when Criminal Appeal stands posted, unless it is absolutely indispensable on account of great inconvenience to the revision petitioners, in which case they shall file a petition under Section 317 of Cr.P.C. seeking to dispense with their presence.

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

A. SHANKAR NARAYANA, J

December 12, 2017.

Note:- CC in 3 days.

(B/O)

gbs