

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL REVISION CASE No.66 of 2006

ORDER:

Heard Sri M. Radha Krishna, learned counsel for the revision petitioner, and the learned Additional Public Prosecutor for the State of Andhra Pradesh appearing for the respondent.

The revision petitioner is Accused No.3 in C.C.No.402 of 1992 on the file of the III Metropolitan Magistrate, Vijayawada.

Precisely, the submission of the learned counsel for the revision petitioner is that in paragraph '5' of the judgment dated 30.06.2003 in CrI.A.No.57 of 1996 preferred by the revision petitioner - Accused No.3, the learned VII Additional District & Sessions Judge, Krishna at Vijayawada, observed that despite affording several chances to get the arguments tendered, the revision petitioner did not avail the same and, therefore, he proceeded on to dispose of the appeal on merits basing on the evidence both, oral and documentary and other material on record and the said observation of the lower appellate Court accounted in not following the procedure inlaid by the provisions of Sections 384 and 385 of the Code of Criminal Procedure. In support of his submission, learned counsel would place reliance on a decision rendered by this Court in **Cheekatimarla Satyanarayana v. State of Andhra Pradesh**¹. The said ruling relates to the Criminal Revision Case filed by Accused No.1 in the very same Calendar Case. Learned

¹ 2012 (1) ALD (CrI.) 332 (AP)

counsel would also submit that in the said ruling, when similar situation arose, this Court held that disposal of the appeal without hearing the Counsel for the accused is unsustainable and, therefore, set aside the judgment of the appellate Court and remitted the case to the appellate Court for fresh disposal according to law after affording opportunity to both sides to make their submissions. Thus, the learned counsel requests to dispose of the present criminal revision case also on the same lines.

The findings recorded in paragraph '9' of the order rendered by this Court in **Cheekatimarla Satyanarayana**, referred to above, read thus:

“As the learned Sessions Judge disposed of the appeal without hearing the Counsel for the accused, the order of the appellate Court is not sustainable and is liable to be set aside. The judgment of the criminal appeal is accordingly set aside. The case is remitted to the appellate Court for fresh disposal according to law after according opportunity to both sides to make their submissions.”

Since the situation in the present criminal revision case is similar to the one in the ruling referred to above, the revision petitioner cannot be discriminated. Therefore, the judgment of the lower appellate court is hereby set aside and the case is remitted to the lower appellate court for disposal in accordance with law after affording opportunity to both sides to make their submissions.

The criminal revision case is, accordingly, disposed of.

Miscellaneous applications, if any pending in the present revision case, stand closed.

JUSTICE A.SHANKAR NARAYANA

24.11.2017
v v

