

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.841 of 2005

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1978, is filed challenging the Judgment, dated 03.11.2004, passed in Criminal Appeal No.120 of 2003, by the Metropolitan Sessions Judge, Visakhapatnam, whereby the learned Metropolitan Sessions Judge remanded the matter to the trial Court for fresh disposal after giving opportunity to both parties to adduce evidence on the limited aspect and decide the question about the maintainability of complaint in the light of answers to the questions extracted in point No.3 of the Judgment apart from considering the Judgment of the Apex Court in **Padmasundararao v. State of Tamil Nadu**¹.

2. The complainant filed a private complaint under Section 200 Cr.P.C., against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act'), which was taken cognizance by the Judicial Magistrate of First Class. After full-fledged trial, the learned Magistrate convicted the accused for the offence punishable under Section 138 of the Act and accordingly, sentenced him to undergo simple imprisonment for a period of six months and to pay fine of Rs.5,000/-. Aggrieved by the said conviction, the accused preferred an appeal in CrI.A.No.120 of 2003 on the file of Metropolitan Sessions Judge, Visakhapatnam, which was allowed on 03.11.2004 and remanded the matter to the trial Court with the following observations made at point No.3 of its Judgment, which read thus:

¹ AIR 2002 Supreme Court 1334

- “i) The trial Court shall consider the question as to whether the memo, dated 09.08.2002 and the amended complaint petition filed by the complainant-first respondent cure the initial defect of filing of the complaint by the General Power of Attorney Holder;
- ii) The trial court shall give opportunity to the Appellant-accused to file objections to the memo dt.9.8.2002 and consider that memo on merits;
- iii) The trial Court shall, if necessary give opportunity to the first respondent-complainant to file a petition for permission to seek the amendment of the original complaint or to receive on file the amended complaint and in case such petition is filed give opportunity to the Appellant-accused to resist the said application and consider the said application on all the aspects and on merits;
- iv) The trial court shall, if necessary give opportunity to both sides to adduce additional evidence on this limited aspect and decide the question about the maintainability of the complaint in the light of the answers to the questions referred supra;
- v) The trial Court shall decide all the questions on merits and on facts and law applicable to the case uninfluenced by the observations if any made by this Court in this Judgment;
- vi) The trial court shall consider the applicability of the ratio in the decision of the Division Bench of our Honourable High Court in the light of the ratio in the decision in Padmasundararao vs. State of Tamil Nadu reported in AIR 2002 Supreme Court 1334 relied upon by the first respondent-complainant; and;
- vii) The trial court shall make an endeavour to dispose of the case as expeditiously as possible.”

3. The appellate Court remanded the matter to the trial Court with certain observations extracted above, which is impermissible under law since the appellate Court has no power to remand the matter to the trial Court under Section 374 Cr.P.C. In any view of the matter, if for any reason, the trial Court recorded an acquittal, the High Court may remit the matter for re-trial and when the appellate Court found that there is

a gross miscarriage of justice as held in **Vimal Singh v. Khuman Singh**², such power has to be exercised only in exceptional circumstances. But, acquittal cannot be converted into conviction while exercising the power under Sections 397 and 401 Cr.P.C. Moreover, the appellate Court is not vested with the power to order re-trial, at best to permit the parties to adduce evidence. Therefore, the order passed by the appellate Court in CrI.A.No.120 of 2003 is contrary to the Judgment the Apex Court reported in **Jugesh Sehgal v. Shamsheer Singh Gogi**³. Therefore, the order of the appellate Court remanding the matter to the trial Court is liable be set aside.

4. Accordingly, the Criminal Revision Case is allowed setting aside the Judgment, dated 03.11.2004, passed in CrI.A.No.120 of 2003 by the Metropolitan Sessions Judge, Visakhapatnam and restoring the appeal to its file, to hear the same and decide in accordance with law.

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

AUGUST 17, 2017
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M. SATYANARAYANA MURTHY, J

² (1998) 7 SCC 223

³ 2009 (14) SCC 683

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Date: 17.08.2017

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