

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.689 of 2005

ORDER:

The petitioner is accused in C.C.No.433 of 2001 on the file of III Metropolitan Magistrate Court, Visakhapatnam, filed this Criminal Revision Case against the judgment in CrI.A.No.121 of 2003 on the file of Metropolitan Sessions Judge, Visakhapatnam, dt. 03.11.2004, remanding the matter to the Magistrate with certain directions contained in para No.7 of the Judgment.

The respondent herein filed a complaint against the petitioner for the offence under Section 138 of NI Act and the trial Court found the accused/petitioner guilty for the offence under Section 138 of NI Act and sentenced to undergo SI for a period of six months and to pay a fine of Rs.5000/- with default sentence. The trial Court further directed that out of the fine amount of Rs.5,000/-, Rs.4,000/- shall be paid towards compensation to the complainant under Section 357(3) Cr.P.C.

Aggrieved by the conviction and sentence imposed under the Calendar and Judgment, an appeal was preferred by the accused in CrI.A.No.121 of 2003. After hearing both the parties, the Appellate Court remanded the matter to the Magistrate making the following observations contained in Point No.3 as follows:

“ (i) The trial Court shall consider the question as to whether the Memo dt. 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. 09.08.2002 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 Hon'ble High Court in the light of the ratio in the decision in Padmasudararao v. State of Tamil Nadu(AIR 2002 SC 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."

The Order dt.03.11.2004 passed in Crl.A.No.121 of 2003 by the Metropolitan Sessions Judge, Visakhapatnam, remanding the matter to the trial Court with certain observations 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 Singh¹, 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 Crl.A.No.121 of 2003 is contrary to the Judgment of the Apex Court reported in Jugesh Sehgal v.

¹ (1998) 7 SCC 223

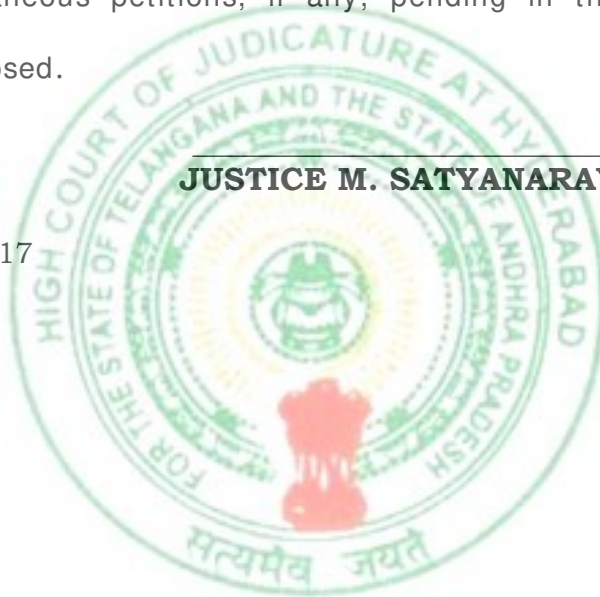
Shamsher Singh Gogi². Therefore, the Order of the appellate Court remanding the matter to the trial Court is liable be set aside.

Accordingly, this Criminal Revision Case is allowed setting aside the Calendar and Judgment dt. 03.11.2004 passed in Crl.A.No.121 of 2003 by the Metropolitan Sessions Judge, Visakhapatnam, while restoring the appeal to the file of Metropolitan Sessions Judge, Visakhapatnam, to hear the same and pass appropriate orders in accordance with law within a period of six months from the date of receipt of a copy of this Order.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:04.09.2017
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² 2009 (14) SCC 683

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