

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.809 OF 2017

JUDGMENT:

This Criminal Appeal, under Section 454 of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.'), is filed aggrieved by the judgment dated 19.12.2014, passed in Sessions Case No.252 of 2014 by the III Additional Sessions Judge (Fast Track Court), Anantapuramu (for brevity, 'the trial Court'), whereby the trial Court ordered for confiscation of the auto rickshaw bearing No.AP 02X 6876, which is in police custody. The appellant is the owner of the auto.

2. Heard the learned counsel for the appellant, learned Additional Public Prosecutor appearing for the respondent-State and perused the material available on record.

3. Learned counsel for the appellant would contend that the appellant is the owner of the auto bearing No.AP 02X 6876; he is not an accused in the Sessions Case No.252 of 2014; the auto was confiscated in the above Sessions Case; the appellant has filed RC book of the auto before the learned Judicial Magistrate of First Class, Anantapuramu, pending trial, the auto was not handed over to him; in the final judgment of the Sessions Case dated 19.12.2014, the said auto was confiscated to the State without there being any material on record; and ultimately, prayed to allow the appeal by granting custody of the auto to the appellant.

4. On the other hand, learned Additional Public Prosecutor opposed the release of the auto in favour of the appellant.

5. In view of the contentions putforth by both sides, the point for determination is, whether the request of the appellant can be acceded to?

6. As per the averments before this Court, the appellant is the owner of the auto bearing No.AP 02X 6876, the same was confiscated to the State, *vide* judgment dated 19.12.2014 in Sessions Case No.252 of 2014 by the trial Court. As per the material placed on record, all the material witnesses turned hostile and the Sessions Case was ended in acquittal of all the accused. Nowhere, it is mentioned with regard to the involvement of the appellant in the above Sessions Case or further, there is no mention in the evidence that the deceased was taken by the said auto. The accused were found not guilty for the offences under Sections 302, 201 I.P.C. r/w Section 34 I.P.C. and they were acquitted under Section 232 Cr.P.C. While dealing with the subject matter of the Sessions Case, the learned Sessions Judge simply passed an order that the marked and unmarked property except the auto bearing No.AP 02X 6876 shall be destroyed after appeal time is over and ordered for confiscation of the auto, which is in the police custody, to the State without assigning any reason. As per the record placed before this Court, even the auto bearing No.AP 02X 6876 is not

marked in the Sessions Case. Under these circumstances, the appellant is entitled for return of the auto.

7. In the result, the auto bearing No.AP 02X 6876, property in Sessions Case No.252 of 2014 shall be returned to the appellant forthwith. Accordingly, the Criminal Appeal is allowed to that extent.

8. As a sequel, miscellaneous petitions, if any pending in this Criminal Appeal, shall stand closed.

Date: 05-12-2017

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Dr. SHAMEEM AKTHER, J



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Date.05.12.2017

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