

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.1344 OF 2013

JUDGMENT:

When the matter called during morning session, there was no representation for the revision petitioner. Even during after-noon session, there is no representation for the revision petitioner - respondent No.2 - accused. Learned counsel for respondent No.1 - *de facto* complainant is present.

2. Heard the learned Additional Public Prosecutor for the State of Telangana.

3. The revision petitioner - accused questioning modification of sentence, dated 19.06.2013, made by the learned Additional Metropolitan Sessions Judge, Cyberabad, NTR Nagar, Hyderabad, in Criminal Appeal No.450 of 2010 preferred by respondent No.1 herein challenging the quantum of sentence imposed by the learned X Metropolitan Magistrate, Cyberabad at Malkajgiri, by his judgment, dated 03.08.2009, in C.C. No.263 of 2009 for the offence punishable under Section 338 of Indian Penal Code, 1860 (for short 'IPC') filed the present Criminal Revision Case.

4. The learned X Metropolitan Magistrate, Cyberabad at Malkajgiri, by his judgment, dated 03.08.2009, in C.C. No.263 of 2009, convicted the revision petitioner under Section 252 of the Code

of Criminal Procedure, 1973, (for short 'Code') on admission of plea of guilt, for the offence punishable under Section 338 IPC, and sentenced him to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for a period of one month.

5. The *de facto* complainant having got upset with the said order, preferred Criminal Appeal No.450 of 2010 on the file of the Additional Metropolitan Sessions Judge, Cyberabad at NTR Nagar, Hyderabad, who passed judgment, dated 19.06.2013, while confirming the conviction recorded for the offence punishable under Section 338 IPC against the revision petitioner, however, sentenced him to undergo imprisonment till rising of the Court and to pay compensation of Rs.15,000/-, and in case of default, to undergo simple imprisonment for a period of three (3) months. Further direction was given to the revision petitioner to surrender before the learned Magistrate's Court within fifteen (15) days from the date of judgment to undergo imprisonment till rising of the Court, and to pay compensation of Rs.15,000/-, and on such payment, the said amount shall be given to the victim by way of compensation under Section 357 of the Code after expiry of appeal time.

6. Now, the accused is before this Court by way of present Criminal Revision Case, contending that the learned Sessions Judge was not right as the learned Magistrate has specifically mentioned that he pleaded mercy and, accordingly, imposed a fine of Rs.1,000/- and

the same was reasonable while taking age and other factors into consideration. It is also contended that O.P. No.251 of 2009 was pending for adjudication for the claim of Rs.5,00,000/- on the file of the X Additional Metropolitan Sessions Judge at Cyberabad. Certain other grounds as regards to amended provisions of Section 372 of the Code having prospective effect when the offence did take place prior to the amendment introduced, did not accede to the submission made by the revision petitioner – accused. One more submission made by the revision petitioner is that even a day's imprisonment will cause suffering for entire life to an innocent citizen.

7. The only short question is, whether the judgment of the learned Sessions Judge is liable to be set aside?

8. The grounds agitated in the Criminal Revision Case are not that concrete and tangible to set aside the judgment of the learned Sessions Judge. The learned Sessions Judge placed reliance on the ruling in **State of Karnataka v. Krishna alias Raju**¹, where the Hon'ble Supreme Court set aside the sentence and fine and imposed rigorous imprisonment for a period of six months and a fine of Rs.1,000/- for the offence punishable under Section 338 of IPC, while other convictions were not disturbed. The learned Sessions Judge has extracted what has been held by the Hon'ble Supreme Court in paragraph No.10 of the judgment. While the learned Sessions Judge

¹. 1987 CrL.L.J. 776 (1)

placed reliance on the ruling opining that the sentence of imprisonment till rising of the Court would be reasonable and modifying the learned Magistrate Court's order, certainly, it cannot be said to be improper or illegal. There is no merit in the present Criminal Revision Case.

9. The Criminal Revision Case is, accordingly, dismissed, confirming the judgment, dated 19.06.2013, passed by the learned Sessions Judge in Criminal Appeal No.450 of 2010. The revision petitioner - accused is directed to surrender before the learned X Metropolitan Magistrate, Cyberabad at Malkajgiri within a month from today i.e., by 12.12.2017 to undergo imprisonment till rising of the Court and to pay compensation amount of Rs.15,000/- (Rupees fifteen thousand only) if not already paid, to which respondent No.1 - *de facto* complainant is entitled. In case, he fails to surrender, as directed, the learned Magistrate shall take necessary steps to secure his presence to serve out the sentences of imprisonment.

As a sequel thereto, Miscellaneous Petitions, if any, pending in criminal revision case, stand closed.

A. SHANKAR NARAYANA, J

November 13, 2017.

Mgr