

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1374 of 2006

ORDER:

This appeal is preferred, by the appellant, who is the complainant, aggrieved by the Judgment, dated 16.03.2005, passed in C.C.No.198 of 2002 by the Court of XVI Metropolitan Magistrate, Hyderabad, by virtue of which the trial court acquitted the accused.

2. The facts of the case are that the accused was the complainant in a crime, on the basis of which C.C.No.12 of 1997 got registered before the Court of Special Judge for SPE & ACB Cases. The offences alleged therein are under Sections 7, 13(1)(d)(i)(ii) r/w 13(2) of the Prevention of Corruption Act. This complaint is filed against the accused for the offence of perjury under Section 193 IPC on the ground that the accused in this case, who is the complainant in C.C.No.12 of 1997, has resiled from his earlier statement made under Section 161 Cr.P.C. and turned hostile.

3. The grounds, on which the appeal is preferred, are that the trial court ought to have seen that under Section 340 Cr.P.C. preliminary enquiry is not mandatory and ought to have convicted the accused for the offence with which he was charged; that it ought to have seen that it is apparent on the face of the record that the accused gave a statement under Section 164 Cr.P.C. before the Magistrate and deposed before

him contrary to that statement, by resiling over his earlier statement; that it ought to have seen that there is apparent variation and contradiction in the testimony of the accused as evidence given in the court under Ex.P1 and the testimony of the accused under Ex.P1 is diametrically opposite to his statement under Ex.P2.

4. Heard the Public Prosecutor appearing for the appellant. None appears for the respondent.

5. The Public Prosecutor files a Memo, at this stage, stating that on the enquiry caused by the police, it came to light that the respondent died on 01.01.2010 due to ill-health.

6. Hence, in view of the above, the appeal becomes infructuous as even if the appeal is allowed and the impugned judgment is set aside, there would be no one to receive the sentence that would be awarded under the appeal.

7. Accordingly, the Criminal Appeal is dismissed.

T. RAJANI, J

September 11, 2018
LMV