

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.3249 OF 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioner-appellant-accused to quash the order dated 07.03.2018 passed in CrI.M.P. No.148 of 2018 in Criminal Appeal No.85 of 2018 on the file of the I Additional Sessions Judge, West Godavari at Eluru. The petitioner-appellant-accused filed the above petition before the Court of Session seeking to suspend the conviction and sentence imposed by the learned Judicial Magistrate of First Class, Bhimadole, vide judgment dated 14.02.018 in C.C. No.768 of 2014 and the Court of Session suspended only sentence and refused to suspend the conviction.

2. Heard Sri T.Niranjana Reddy, learned senior counsel representing Sri M.Sudheer Kumar, the learned counsel for the petitioner, Sri Posani Venkateswarlu, learned Public Prosecutor representing the respondent-State and perused the record.

3. It has been contended that the prosecution witnesses, i.e., P.W.1 to P.W.8 did not support the prosecution case. The learned Magistrate relying on the evidence of P.W.9 and P.W.12 was pleased to convict and sentence the petitioner for the offences under Sections 353 and 506(ii) I.P.C. and Section 7(1) of the Criminal Law Amendment Act. Learned senior counsel for the petitioner-appellant-accused would submit that there are only two material witnesses, i.e., P.W.9 and P.W.12; there are inconsistencies in the evidence as to the manner of commission of offences; while dealing with the application filed by the petitioner for suspension of sentence, the Court of Session held that it has no power to

suspend the conviction and the remedy is available only under Section 482 Cr.P.C. Learned counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court in **Lily Thomas v. Union of India and others**¹, wherein it is held that the appellate court has power to suspend the conviction under Section 389(1) Cr.P.C. The High Court has also power to suspend the conviction under Section 482 Cr.P.C.

4. On the other hand, learned Assistant Public Prosecutor opposed the relief sought for by the petitioner-appellant-accused.

5. As seen from the material placed on record, P.W.9 and P.W.12 are the only material witnesses. P.W.12 only spoke about the occurrence of the incident. There are few material inconsistencies. Those are required to be examined in detail in the impugned appeal by the Court of Session. The Court of Session was pleased to suspend the sentence of imprisonment only. It is also brought to the notice of the Court that the petitioner is a sitting M.L.A. If the conviction is not suspended, it causes grave injustice to him. Generally, this Court would not suspend the conviction pending appeal. In view of the nature of the material evidence on record and the submissions made by both sides, it is appropriate to suspend the conviction recorded against this petitioner-appellant-accused for the offences under Sections 353 and 506(ii) I.P.C. and Section 7(1) of the Criminal Law Amendment Act, vide judgment dated 14.02.2018 in C.C. No.768 of 2014 on the file of the Judicial Magistrate of First Class, Bhimadole, West Godavari District, accordingly conviction is suspended pending appeal before the Court of Session.

¹ (2013) 7 SCC 653

6. The Criminal Petition is disposed of as indicated above.
Miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 16-03-2018

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