

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.699 of 2011

ORDER:

Upon hearing learned Special Public Prosecutor for CBI Sri K.Surender, this Court is of the view that learned Special Judge for Trial of offences under SCs and STs (POA) Act-cum-V Additional Sessions Judge, Nellore, committed grave jurisdictional error in refusing to entertain the Criminal Appeal on the ground that same is not maintainable before the Sessions Court.

2) The factual matrix of the case is thus:

a) The CBI, Nellore who is the complainant filed charge sheet against six accused before the Judicial Magistrate of First Class, Atmakur, which was registered as C.C.No.200/2002. We are concerned with Accused No.6. The case against him was split up and numbered as C.C.No.233/2005. Thereafter, on his apprehension trial was proceeded against him for the offence under Section 411 IPC. Learned Judicial Magistrate of First Class, Atmakur in his judgment dated 29.02.2008 acquitted A.6. Aggrieved, the CBI filed Criminal Appeal on 18.06.2008 before the Sessions Court, Nellore, which was made over to the Court of V Additional Sessions Judge, Nellore and numbered as CrI.A.No.66/2008. The learned Judge took objection with regard to the maintainability of the appeal before the Sessions Court instead of High Court since the appeal was against the acquittal. It appears, learned Public Prosecutor on behalf of appellant therein brought to the notice of

the lower Appellate Court about amendment to Section 378 Cr.P.C, which according to him would facilitate the prosecution to file appeal against the acquittal judgment passed by a Judicial Magistrate of First Class, before the Sessions Court. However, in Para 17 of the impugned judgment, learned Judge observed that amendment to Section 378 Cr.P.C had not come into force by the date of appeal and therefore, the appeal was not maintainable before the Sessions Court. On this sole ground, he dismissed the appeal without giving findings on the merits of the case.

Hence the instant Crl.R.C.

3) Learned Special Public Prosecutor would strenuously argue that the lower Appellate Court was thoroughly mistaken in rejecting the appeal on the sole ground that the amendment had not come into force by the date of appeal. He would submit that amendment to Section 378 Cr.P.C came into force w.e.f. 23.06.2006 by virtue of Cr.P.C Amendment Act (25 of 2005), as per which, an appeal can be filed before the Court of Sessions against the acquittal judgment passed by a Magistrate.

4) On perusal of the relevant provisions, this Court agrees with the learned Special Public Prosecutor. Section 378 Cr.P.C as it stood before amendment reads thus:

“378. Appeal in case of acquittal.

(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any

case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under subsection (1) or under sub-section (2).

As per the above provision, particularly sub-section (2), an appeal against acquittal ought to be filed by the CBI before the High Court. However, Section 378 Cr.P.C underwent drastic changes by virtue of the Cr.P.C Amendment Act, 2005 (25 of 2005) w.e.f. 23.06.2006. The amended Section 378 Cr.P.C reads thus:

“Section 378 - Appeal in case of acquittal.

(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5),

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.”;

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal--

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section(1) or under sub-section(2).”

Sub-section(2) is germane for our consideration. It lays down that the concerned Agency i.e, CBI in this case can file an appeal to the Court of Sessions from the order of acquittal passed by the Magistrate in respect of a cognizable and non-bailable offence. Since the offence alleged against respondent/A.6 is under Section 411 IPC, which is a cognizable and non-bailable offence and the same was ended in acquittal by the judgment of Judicial Magistrate of First Class, Atmakur, appeal against the said judgment would squarely lie in the Court of Sessions. Learned Judge of the lower Appellate Court had thus committed jurisdictional error in holding that the amendment to Section 378 Cr.P.C had not come into force. Hence, his judgment is not maintainable under law and the same is liable to be set aside.

5) In the result, this Criminal Revision Case is allowed and the judgment dated 22.10.2009 in CrI.A.No.66/2008 passed by the Special Judge for Trial of offences under SCs & STs (POA) Act-cum-V Additional Sessions Judge, Nellore, is set aside and the said Court is directed to receive the appeal and upon hearing the arguments of both parties, pass the judgment on merits on all the points involved in the appeal.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 19.11.2018

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