

THE HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.1272 of 2018

ORDER:

Heard the learned counsel for the petitioner as well as the learned Public Prosecutor.

The present criminal revision case is filed against the docket order dated 16.3.2018 in CrI.M.P.(GL).No.439 of 2018 in Criminal Appeal No.81 of 2018 pending on the file of the XI Additional District Judge, Tenali, in returning the CrI.M.P.(GL).No.439 of 2018 seeking extension of time for suspension of the sentence awarded in CC.No.357 of 2013.

Brief facts of the case are that the petitioner herein was found guilty for the offence under Section 138 of the Negotiable Instruments Act and is convicted under Section 255(2) of Cr.P.C. and was sentenced to undergo simple imprisonment for a period of one month and to pay a fine of Rs.3,000/-; in default to suffer simple imprisonment for a period of one week. Aggrieved by the said order, the petitioner herein filed an appeal vide CrI. Appeal No.81 of 2018 before the XI Additional District Judge, Tenali. Pending appeal, the petitioner filed a petition vide CrI.M.P.(GL).No.439 of 2018 seeking suspension of the sentence awarded against him, However, by orders dated 16.3.2018, the said petition was returned for want of extension of the suspension order. Aggrieved by the same, the present Criminal Revision Case is filed.

To appreciate the issue involved in the present criminal revision case, the provision of Section 389(1) Cr. P.C. has to be looked into. Section 389 (1) Cr.P.C. reads as under:

“389. Suspension of sentence pending the appeal; release of appellant on bail.

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.”

Mere perusal of the above said provision would make it clear that the Sessions Court ought not to have returned the said criminal petition since the appeal is pending consideration before it. Under such circumstances, the learned XI Additional District Judge, Tenali, ought to have considered the application for suspension of sentence and passed appropriate orders on merits, in accordance with law.

Therefore, the Court below is directed to take up the petition filed vide CrI.M.P.(GL).No.439 of 2018 seeking suspension of sentence and consider the same and pass appropriate orders on merits, in accordance with law.

It is brought to the notice of this Court by the learned counsel for the petitioner that the original petition which is returned has been filed in this Court. Since the certified copy of the same could not be given, the petitioner is permitted to file a fresh petition and on such filing the Court below may consider and pass appropriate orders.

With the above said observation, the Criminal Revision Case is disposed of.

Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

JUSTICE P.KESHA RAO

Date: 04/06/2018

Note: Issue cc in three days

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