

* HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

+ CRIMINAL PETITION No.11052 of 2017

%22.10.2018

Between:

Merakanapalli Nageswara Rao

.....Petitioner

And

Muthyala Nageswara Rao and
another-The State of Andhra Pradesh
rep. by its Public Prosecutor,
High Court of Judicature at Hyderabad

.....Respondents

< GIST:

> HEAD NOTE:

! Counsel for the petitioner : Sri Ghantasala Udaya Bhasker

^ Counsel for the respondent No.1: -Nil-

Counsel for the respondent No.2: Public Prosecutor

? Cases referred : -Nil-



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.11052 of 2018

ORDER :

The petitioner is the accused in CrI.A.No.6 of 2017 pending on the file of the learned Sessions Judge, Krishna at Machilipatnam. It is against the acquittal judgment, dt.12.05.2015 of the learned Asst. Sessions Judge, Avanigadda, in S.C.No.7 of 2014 for the offences punishable under Sections 324, 506 and 306 IPC on the three charges framed in finding guilty for lesser offence out of Section 324IPC for Section 323 IPC. The said Sessions Case (S.C.No.7 of 2014) before the trial Court is outcome of Cr.No.147 of 2002 of Station House Officer, Avanigadda from the final report filed before learned Magistrate, Avanigadda who committed the case in PRC No.12 of 2013 to the Sessions Division and made over to the Asst. Sessions Judge after framing of charges and conducting of full fledged trial.

The respondent No.1 is no other than the defacto-complainant of said Cr.No.147 of 2012 covered by PRC No.12 of 2013 and S.C.No.7 of 2014. Aggrieved by the said judgment of the trial Court in acquitting on the two charges and in convicting for a lesser one out of one of three charges, maintained the appeal as Victim within the meaning of Section 2(wa)CrPC read with proviso of Section 2 CrPC which came into force w.e.f.30.12.2009 by the Criminal Law Amendment Act 5 of 2009. No doubt, there was no any leave for appeal as contemplated by Section 378(3) CrPC filed before High Court by the defacto-complainant-Victim supra.

The learned counsel for the petitioner in the present application impugning the maintainability of appeal relied on the expressions of the Apex Court in Satya Pal Singh Vs. State of Madhya Pradesh-2015) CrI.L.J.

4929 and Roopendra Singh Vs. State of Tripura-(2017) 13 SCC 612 relying upon Satya Pal Singh supra.

In fact, referring to the above expressions, the 3 Judge Bench of the Apex Court very recently answered by majority holding that in the appeal by Victim, no leave of the High Court as contemplated by Section 378 CrPC is required and the appeal of the Victim is maintainable before the same Court where if at all conviction is maintainable.

Once such is the case, the contentions raised in the petition though available as on the date of filing of the petition now not available by virtue of the recent 3 Judge Bench expression of the Apex Court in Mallikarjun Kodagali(dead) Vs. State of Karnataka, 2018 in SLP No.7040-7041 of 2014 in CrI.A.Nos.1281-1282 of 2018, dt. 12.10.2018.

Accordingly, the Criminal Petition is disposed of holding that there is no leave under Section 378 CrPC is required for the Victim to maintain the appeal under Section 372CrPC in view of the latest expression of the Apex Court supra. It clearly lays down that the same is applicable to the appeals filed after the amendment came into force even in the crimes prior to that. Consequently, miscellaneous petitions, if any, pending shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:22.10.2018

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(B/ o) Vvr

Note: Copy marked to the Registrar (Judicial) to instruct the Registry.

Sd/ xxxx
Dr. SSRB, J.