

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.R.C.No.2832 of 2018

ORDER:

This revision case is arising out of the order dated 12.10.2018 passed in Crl.A.No.11 of 2018 on the file of I Additional District & Sessions Judge, Vizianagaram.

2. The revision petitioners are A2 and A3 in S.C No.77 of 2011 on the file of Assistant Sessions Judge, Vizianagaram. The learned Sessions Judge found A1 to A3 guilty for the charge under Section 307, 353 read with 34 IPC and accordingly sentenced them to suffer imprisonment for a period of 7 years each and to pay a fine of Rs.5,000/- each. A2 and A3 are further sentenced to pay a fine of Rs.5,000/- each, in default, to suffer imprisonment for four months each for the offence punishable under Section 353 read with 34 IPC.

3. The petitioners/A2 and A3 have preferred Criminal Appeal No.11 of 2018 on the file of I Additional District & Sessions Judge, Vizianagaram, but the same was dismissed for default vide order dated 12.10.2018. The order of the lower appellate Court, reads as under:

“Appeals 1 & 2 are absent. No representation for appellants. Except on a single occasion, appellants 1 & 2 did not appear before this Court.

Hence, the appeal is dismissed for default.”

4. Heard the learned counsel for the petitioners and learned Additional Public Prosecutor for respondent-State.

5. Learned counsel for the petitioners submits that the order passed by the lower appellate Court is not on merits and therefore sought for setting aside the order passed by the lower appellate Court.

6. Learned Addl. Public Prosecutor placed reliance on the judgment of the Hon'ble Supreme Court reported in **Bani Singh and others Versus State of U.P.**¹, wherein it was held that, as per Sections 385-386, there is no provision for dismissal of the appeals preferred against the judgment passed by the Sessions Court or trial Court. The appellate Courts have to dispose of the cases on merits on hearing the parties available before the Court, if party is not available, basing on the material on record, the cases have to be disposed of.

7. In view of the said preposition, the order passed by the lower appellate Court is erroneous and illegal. Therefore, the order passed by the lower appellate Court is set aside and the matter is remitted to the lower appellate Court for disposal in accordance with law.

8. It is also pertinent to note that the petitioners/A2 and A3 have failed to appear before the lower appellate Court on the particular day.

¹ (1996) 4 Supreme Court Cases 720

9. Keeping in view the facts and circumstances of the case, the orders of the lower appellate Court are hereby set aside. However, in view of the fact that non-appearance of the petitioners before the lower appellate Court was also one of the grounds for dismissal of the order, the petitioners/A-2 and A-3 are directed to pay costs of Rs.5,000/- (Rupees five thousand only) each to be payable to the Legal Services Authority, High Court of A.P., Hyderabad, within one (01) month from the date of receipt of a copy of this order.

10. It is made clear that the lower appellate Court may take necessary steps in this regard.

11. With these observations, the Criminal Revision Case is disposed of.

Miscellaneous Petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J.

Date : 31-10-2018

Note : C.C. tomorrow.

(B/o)

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