

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.R.C.No.3020 of 2018

ORDER:

This revision case is arising out of the order dated 26.10.2018 passed in Crl.M.P.No.313 of 2018 in Crl.A.No.223 of 2018 by the III Additional Sessions Judge, FAC: V Additional District & Sessions Judge at Karimnagar.

2. The revision petitioner is the accused in Crime No.34 of 2011 in C.C.No.448 of 2011 on the file of I Additional Judicial Magistrate of First Class, Huzurabad, wherein he was convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for further period of one month for the offence punishable under Section 506 IPC. The petitioner was also sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for a further period of one month for the offence under Section 509 IPC. Both sentences shall run concurrently.

3. Aggrieved by the impugned order, the petitioner has filed Crl.M.P.No.313 of 2018 in Crl.Appeal No.223 of 2018 before the III Additional Sessions Judge, FAC: V Additional Sessions Judge, Karimnagar, for suspension of sentence imposed by the trial Court for the offences punishable under

Sections 506 & 509 IPC. The same was dismissed vide order dated 26.10.2018, which reads as under:

“This petition is for suspension of sentence of imprisonment of six months for the offence punishable under Sections 506 and 509 IPC and fine of Rs.1,000/-. The petitioner was granted bail by the trial Court after conviction upto 12.10.2018. The petitioner was not diligent in preferring appeal and obtaining orders of appellate Court for bail till disposal of the appeal. The petitioner allowed the trial Court to issue NBW as he was not present and no representation from 12.10.2018 before the trial Court. Therefore, since the petitioner is not diligent and as NBW was pending against him issued by the trial Court, this Court is of the considered opinion that it is not proper to suspend sentence of imprisonment. Hence, this petition is dismissed.”

4. Being aggrieved, the petitioner has preferred the present Criminal Revision.

5. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor, and with their consent, this matter is taken up for hearing and disposal.

6. At the outset, the point that arises for consideration is: **Whether the revision petitioner is entitled for suspension of sentence imposed by the trial Court during pendency of appeal in CrI.A.No.223 of 2018 and whether the order passed by the learned Sessions Judge is sustainable in accordance with law?**

7. The learned Sessions Judge dismissed the petition filed by the petitioner for suspension of sentence on the grounds mentioned above.

8. Learned counsel for the petitioner submits that the order passed by the appellate Court dismissing the petition filed for suspension of sentence is not in accordance with law. He further submits that the petitioner was on bail before the trial Court during trial. The trial Court after convicting the petitioner, has suspended the sentence, for a period of one month to enable him to prefer an appeal, as per the provisions under Section 378 (3) Cr.P.C. However, the petitioner could not prefer any appeal, within the stipulated time, and therefore, NBW was issued against him by the trial Court, which is pending now.

9. As the petitioner has filed an appeal during pendency of NBW against him, the same is coming in his way to proceed with the appeal. On one hand, the petitioner has been challenging the order passed by the trial Court and preferred an appeal before the appellate Court and filed a petition for suspension of sentence, and there are no serious reasons coming forward for not suspending the sentence imposed by the trial Court when the trial Court itself suspended for a period of one month.

10. It is obvious that the petitioner has preferred an appeal and he has also filed a petition for suspension of sentence, and keeping in view the fact that, the offences punishable for sentence are below three years, and the petitioner has also paid fine amount, there is no justification

in not suspending the order passed by the appellate Court. Therefore, the order passed by the appellate Court is to be set aside.

11. Learned counsel for the petitioner submits that NBW was pending against the petitioner and suspension of sentence was not ordered by the appellate Court, and therefore, the order passed by the learned Sessions Judge may be set aside, and also, NBW may be recalled, issued against the petitioner, by the trial Court.

12. In view of the foregoing reasons, the order dated 26.10.2018 passed by the learned Sessions Judge in CrI.M.P.No.313 of 2018 in CrI.A.No.223 of 2018 is hereby set aside and the petitioner is directed to file a petition before the trial Court for recalling of NBW issued against him, and on such application, the trial Court, may dispose of the same, on the same day.

13. With these observations, the Criminal Revision Case is allowed.

Miscellaneous Petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J.

Date : 05-11-2018
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