

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE NO.3446 OF 2018

ORDER:

This revision is arising out of order, dated 15.11.2018 passed in CrI.M.P.No.59 of 2018 in C.A.No.370 of 2018 by the VIII Addl. District and Sessions Court-cum-Special Court for Trial of Offences Against Women, East Godavari at Rajamahendravaram.

2. The revision petitioner is A2. He was convicted in C.C.No.603 of 2015 by the Judl. Magistrate of I Class, Alamuru, for the offence punishable under Section 384 r/w 34 IPC and sentenced to undergo S.I. for 8 months and to pay a fine of Rs.1,000/-.

3. Aggrieved by the impugned judgment, the petitioner-A2 has preferred an appeal and the present petition seeking suspension of sentence before the appellate Court. The learned Sessions Judge has dismissed the petition as not maintainable as the petitioner has not filed the petition before the suspension of sentence ordered by the trial Court was completed. As the petitioner has not preferred appeal after the period of suspension granted by the trial Court, the trial Court has issued N.B.W. against the petitioner.

4. Learned counsel for the petitioner submits that the petitioner has filed the appeal within the statutory period of limitation challenging the impugned judgment and sought for revising the order passed by the trial Court. He further submits that the sentence imposed against the petitioner is 8 months and fine of Rs.1000/- and he has preferred an appeal, the petitioner is entitled for suspension of sentence under Section 389 (1) Cr.P.C. He further submits that the petitioner has already filed an appeal and along with that, he has filed a petition for suspension. Therefore, there are no valid grounds

for the appellate Court to dismiss the petition filed for suspension of sentence under Section 389 (1) Cr.P.C.

5. Learned Public Prosecutor has taken notice and no counter has been filed.

6. Section 389 (1) Cr.P.C. makes a provision for suspension of sentence pending the appeal and release of the appellant on bail. As per Section 389 (2) Cr.P.C., the power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by convicted person to a Court subordinate thereto.

7. In the instant case, the sentence imposed by the trial Court was not suspended as per the provision under Section 389 (1) Cr.P.C. on the ground that N.B.W. was pending against the accused. There are no valid grounds for the appellate Court for not suspending the sentence when the appellant has approached the appellate Court within the statutory time.

8. Therefore, the order passed by the appellate Court is set aside by suspending the sentence of imprisonment in view of the provision under Section 389 (2) Cr.P.C. and the petitioner-A2 is ordered to be enlarged on bail on his executing a self bond for a sum of Rs.10,000/- with two sureties each in a like sum to the satisfaction of Judl. Magistrate of I Class, Alamuru and the trial Court shall re-call N.B.W. issued against the petitioner-A2 since the sentence imposed against him is suspended.

9. Accordingly, the Criminal Revision Case is allowed. Miscellaneous petitions, if any pending in this revision shall stand closed.

GUDISEVA SHYAM PRASAD, J

DATED: 17-12-2018

Hsd

