

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

Criminal Revision Case No.78 of 2019

ORDER:

Among the three accused/appellants in CrI.A.No.120 of 2016, the present revision petitioner is A-3 or A-4, as the case may be, no other than 3rd appellant, by name Peddiraju Ravi. The other two appellants are Peddiraju Poshetty and Peddiraju Satish.

2. Heard learned counsel for the revision petitioner and the learned Public Prosecutor representing the 1st respondent State and perused the material on record.

3. The appeal is maintained against the impugned trial Court's judgment in C.C.No.571 of 2012, dated 03.11.2016. In the lower Court, there is Advocate on record for the appellants including the revision petitioner.

4. A perusal of the docket order, impugned in this revision, of the lower appellate Court, dated 24.09.2018, reads as follows:

"Accused No.3 absent continuously and reported that he went to abroad hence appeal against A3 is dismissed. Issue NBW to commit the accused to suffer imprisonment in trial court. A1, A2 called present at request of the counsel, for arguments call on 15.10.2018."

5. The revision petitioner/3rd appellant supposed to submit arguments on merits. He did not come forward even representing through Advocate though Court need not always insist the presence of the appellant once representing through Advocate properly before the Court. Even dismissal of the appeal cannot be find fault always, but for the general principle is to decide the appeal on merits, even party failed to attend. It is not even the case that the Advocate reported no instructions. Having instructions, the Advocate is supposed to argue

the matter on merits, if at all by filing application to condone the absence of the appellant. That was not done. Thereby, it cannot be find fault the order of the lower Court. However, the fact remains as per the expression of the Apex Court Three Judge Bench in **Bani Singh v. State of U.P.**¹, an appeal cannot generally be dismissed for default, but for to decide on merits, even parties fail to co-operate. Leave about, if at all any complicated question of fact or law and the Court felt any assistance required to appoint some Amicus Curie.

6. Having regard to the above, the lower Appellate Court is required to decide the appeal on merits, whether represented by Advocate to submit arguments, else on its own and if at all there are any complicated questions of fact and law involved to take the assistance of any legal aid counsel and that difficulty in the case does not arise because for other appellants, there are Advocates on record.

7. Having regard to the above and subject to the above observations, the Criminal Revision Case is allowed by setting aside the dismissal order restoring the appeal, which is subject to costs of Rs.4,000/- to Army Welfare Fund. If failed to pay before the lower Appellate Court within two (02) weeks from the date of receipt of a copy of this order, the order of the lower Appellate Court holds good.

Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

Date: 31st January, 2019

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¹ AIR 1996 S.C. 2439

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