

(2010) 08 AP CK 0018

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 974 of 2010

Maruthi College of Engineering and Technology and Mohd.
Abdul Mannan Khan

APPELLANT

Vs

The State of Andhra Pradesh and Mohd. Salahuddin Ghori

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23, Order 41 Rule 24, Order 41 Rule 25, Order 41 Rule 26
Criminal Procedure Code, 1973 (CrPC) — Section 313, 313(1), 377, 378, 386

Citation : (2010) 2 ALD(Cri) 955 : (2011) CriLJ 397 : (2011) 7 RCR(Criminal) 1916

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : S. Jagadish, for the Appellant; Public Prosecutor for Respondent No. 1 and K. Suresh Reddy, for the Respondent

Final Decision : Allowed

Judgement

Samudrala Govindarajulu, J.—The accused 1 and 2 filed this revision petition questioning judgment dated 10.02.2010, passed by the Metropolitan Sessions Judge, Hyderabad, in CrI. A. No. 328 of 2008 remanding (?) back C.C. No. 278 of 2005 to the VII Additional Chief Metropolitan Magistrate, Hyderabad, on two grounds.

2. At the outset, I would like to point out powers of the Appellate Court u/s 386 Code of Criminal Procedure. Section 386 Code of Criminal Procedure reads as follows:

After perusing such record and hearing the Appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal u/s 377 or Section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction-

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c) in an appeal for enhancement of sentence-

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement;

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

3. As per Clause (b)(i), the Appellate Court in an appeal from conviction has got power to reverse the finding as well as sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial. There is no power for the criminal Appellate Court to remand a case like a civil Appellate Court under Order XLI Rules 23 to 26 Code of Civil Procedure. The option open to the Appellate Court is to order re-trial. The lower Appellate Court should have acquainted itself with Section 386 Code of Criminal Procedure about the powers to be exercised as an Appellate Judge on the criminal side. The criminal Courts know about remanding an accused and not remanding a case.

4. The remand order passed by the lower Appellate Court is cryptic. It is observed therein that the trial Court erroneously imposed sentence of

imprisonment against a juristic person also. If it is an error, it is open to the Appellate Court to rectify the alleged error. It cannot be a ground for remand of the appeal. The second reasoning given by the lower Appellate Court is that contents of Ex. P15 were not put to the accused in examination of the accused u/s 313 Code of Criminal Procedure.

5. Section 313(1) Code of Criminal Procedure contemplates examination of the accused personally to explain any "circumstances appearing in evidence against him". It means that in examination u/s 313 Code of Criminal Procedure, the Court invites attention of the accused to the incriminating evidence against the accused. If this is to be interpreted as the entire evidence of prosecution and entire contents of all the documents relied upon by the prosecution, then it would mean only interpreting the provision in a manner in which it did not intend to convey. If such interpretation is given to Section 313(1) Code of Criminal Procedure, then examination of the accused should include total examination-in-chief of all the prosecution witnesses and total contents of all the prosecution documents including F.I.R. The words "circumstances appearing in evidence against him" mean whether there is any evidence which mulct the accused with criminal liability. No doubt, as pointed out by the senior Counsel for the second Respondent/complainant, contents of admissible confessional statements and contents of dying declarations have to be confronted to the accused in examination u/s 313 Code of Criminal Procedure. It is so because those confessional statements and dying declarations are direct circumstances which incriminate the accused with regard to commission of the offence. In the case on hand, Ex. P15 is stated to be Memorandum of Understanding entered into between the parties. There is no admission of any criminal liability therein. Taken by itself, it may not be said to be an incriminating document as such. In this context, I would like to draw difference between an incriminating material and supporting material for the prosecution. Contents of Ex. P15 are only supporting material for the prosecution and cannot be said to be incriminating material against the accused as such. Thus, both the grounds on which the lower Appellate Court remanded the case to the trial Court are unsustainable in law.

6. Before leaving this case, I would like to observe that delivery of such cryptic judgment may boost up figures of disposal of the Sessions Judge, but it will not serve the cause of criminal justice. Such easygoing methods should be avoided.

7. In the result, the criminal revision petition is allowed setting aside the order passed by the Metropolitan Sessions Judge and directing the Metropolitan Sessions Judge to dispose of the criminal appeal according to evidence on record.