

Moulasab. Vs. Thalak Police Station, Rep by State Public Prosecutor

Moulasab. Vs. Thalak Police Station, Rep by State Public Prosecutor

SooperKanoon Citation : sooperkanoon.com/928798

Court : Karnataka

Decided On : Aug-25-2012

Judge : A.N. Venugopala Gowda, J.

Acts : [Code Of Criminal Procedure \(CrPC\), 1973](#) - Sections 397, 401

Appeal No. : Criminal Revision Petition No.556 of 2010

Appellant : Moulasab.

Respondent : Thalak Police Station, Rep by State Public Prosecutor

Favor of : .

Judgement :

(Prayer: This CrI. R.P. is filed under S.397 r/w 401 Cr. P.C, praying to set aside the judgment and order dated 16.1.2010 in CrI.A.No.59/2008 passed by the learned Addl. District and Sessions Judge, Fast Track Court, Chitradurga, confirming the judgment and order in C.C.No.291/2006 dated 27.6.2008 passed by the learned Civil Judge (Jr.Dn.) and JMFC, Molakalmuru.)

1. In this Criminal Revision Petition, Judgment and order dated 16.1.2010, in CrI.A.No.59/2008, passed by the learned Additional District and Session Judge, Fast Track Court, Chitradurga has been challenged. The learned Appellate Judge has affirmed the Judgment and order of the learned JMFC, Molakalmuru, dated 27.6.2008, passed in C.C.No.291/2006, whereby, the petitioner and another

person was found guilty of an offence under S.379 IPC and sentenced to undergo one year and three months simple imprisonment and pay fine of Rs.3,000/- and in default, to undergo three months further simple imprisonment.

2. Sri H. Kantharaja, learned advocate, argued that, the Appellate Judge in an appeal directed against the order of conviction is required to arrive at an independent conclusion, on reappraisal of the entire evidence, which is not the case herein. He further submitted that the learned Appellate Judge has decided the appeal most casually and also in an un-judicious manner and hence, Interference is warranted.

3. Sri Vijayakumar Majage, learned HCGP, on the other hand, supported the impugned Judgments and sought dismissal of the petition.

4. I have gone through the Judgments of the Appellate Court and the Trial Court and also the record of the case. On perusal of the Judgment of the Appellate Court, I find that, the learned Appellate Judge (Sri I.S. Jantli) has copied and pasted paras 9 to 16 of the Trial Court Judgment, at paras 16 to 23 of his Judgment and has summed up the conclusion in the following manner:

5. The Judgment and order of the Appellate Judge leaves much to be desired. There is virtually a casual approach and non-consideration of the matter. In the Judgment of the Appellate Court, there is hardly any discussion of the evidence on record. Without any elaboration and arriving at Independent findings, on re-appraisal of the evidence, the learned Appellate Judge, by merely resorting to copying and pasting of the evidence and also the findings recorded by the learned Trial Judge, has in the penultimate paras recorded the concurrence, in the manner noticed supra and has dismissed the appeal, which is an un-judicious act.

6. In Rama Versus State of Rajasthan, (2002) 4 SCC 571, a criminal appeal had been dismissed confirming the convictions and sentences awarded by the Trial Court under Ss.326 and 325 r/w S.34 of IPC. The Appellate Court had adopted a novel method of disposal of criminal appeal, by simply saying that, after re-appreciation of evidence and re-scrutiny of records, it did not find any error apparent in the finding of the Trial Court, even without re-appraising the evidence.

While allowing the appeal filed by the accused, It has been held as follows:

.It is well settled that in a criminal appeal, a duty is enjoined upon the appellate court to reappraise the evidence itself and it cannot proceed to dispose of the appeal upon appraisal of evidence by the trial court alone especially when the appeal has been already admitted and placed for final hearing. Upholding such a procedure would amount to negation of valuable right of appeal of an accused, which cannot be permitted under law."

7. The Apex Court has consistently observed that, an appeal against an order of conviction preferred by an accused, must be considered by the Appellate Court, both on questions of law and questions of fact and record the findings. In the instant case, such course of action is not to be seen.

8. Keeping in view, the grounds raised in the appeal memorandum and the

JUDGMENT / ORDER

passed thereon, impugned in this petition, Sri H. Kantharaja is justified in criticizing the judgment as a casual and un-judicious act. The impugned Judgment of the Appellate Court being perverse and illegal, cannot be sustained. In the circumstances, the appeal requires to be considered in detail and the grounds raised therein require a close scrutiny of the record of the case.

In the result, the impugned Judgment and order of the Appellate Court is set aside and the matter is remitted for hearing afresh.

Since, the matter is an old one, the Appellate Court is directed to decide the matter as early as possible and before 12.01.2013. In order to expedite the hearing and decision, the parties are directed to appear before the Appellate Court on 22.11.2012 and receive further orders.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com