

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

MISCELLANEOUS APPLICATION NO.204 OF 2020

IN

CRIMINAL APPEAL NO.1463 OF 2009

S. SHANKAR

APPELLANT

VERSUS

STATE OF ANDHRA PRADESH
REP. BY CBI

RESPONDENT

O R D E R

1. Delay in filing the affidavit is condoned.
2. This miscellaneous application has been registered *suo motu* pursuant to a letter dated 31.10.2019 sent by the Registrar General of the High Court of Telangana at Hyderabad. The letter, which is addressed to the Secretary General of this Court, seeks clarification of the order dated 23.07.2019 passed by a three-Judge Bench of this Court, whereby a batch of Criminal Appeals No.702, 1462, 1463 and 1464 of 2009 were disposed of. The controversy pertains to Criminal Appeal No.1463 of 2009 filed by S. Shankar, who was accused no.5 in C.C. No.86/1996 decided by the Principal Special Judge for CBI Cases, Hyderabad vide judgment dated 31.12.2000.

3. This Court while disposing of Criminal Appeal No.1463 of 2009 passed the following order:-

"This appeal arises out of the judgment of the High Court of Judicature, Andhra Pradesh at Hyderabad passed in Criminal Appeal No. 209 of 2001 whereby the High Court confirmed the judgment of the Trial Court in C.C. No. 86 of 1996 dated 31.12.2000 on the file of the Court of the Special Judge for C.B.I. Cases, Hyderabad.

The operative portion of the judgment of the Trial Court convicting and sentencing the appellant S. Shankar, who was Accused No. 5 in C.C. No. 86 of 1996, reads thus:-

"82. I, therefore convict A.1 to A.3 and A.5 for the offences U/Sec.120-B r/w 406 I.P.C., A.1 to A.3 U/Sec.13(2) r/w. 13(1)(d) of P.C. Act, 1988 and A.5 for the offence U/S. 406 I.P.C.

x x x x x

Having regard to the circumstances explained by A.1 to A.3 and A.5, I am of the view that ends of justice would meet if A.1 to A.3 are sentenced to undergo simple imprisonment for One year U/Sec.120-B r/w 406 IPC and U/Sec.13(2) r/w. 13(1)(d) of P.C. Act, 1988 and to pay fine of Rs. 1,000/- each on each count, in default to undergo simple imprisonment for One month each and A.5 U/Sec.120-B r/w. 406 and U/Sec.406 IPC and pay Rs.1,000/- (Rs.500/- on each count) each, in default to undergo simple imprisonment for One month. A.1 to A.3 and A.5 are sentenced accordingly and their sentence shall run concurrently."

From the aforesaid conclusion, it is amply clear that Accused No. 5 in C.C. No. 86 of 1996 was convicted for the offence under Section 120-B read with Section 406, IPC and for the offence under Section 406, IPC separately. He was only sentenced to pay a fine of Rs.500/- on each count, thus totalling Rs.1,000/-, and in default to undergo one month's simple imprisonment. No sentence of imprisonment was passed against him.

The appellant herein has already paid the fine imposed upon him. He is not interested in pursuing this appeal. Mr. R. Basant, learned senior counsel appearing for the appellant, is justified in arguing that the High Court had wrongly construed the operative portion of the judgment of the Trial Court as one imposing a sentence of imprisonment of one year against the appellant.

Since we find that the Trial Court had merely imposed a sentence of payment of fine of Rs.1,000/- on the appellant, the judgment of the High Court is clarified accordingly.

In view of the above, the appeal stands disposed of, making it clear that no sentence of imprisonment was imposed on Accused No.5 in C.C. No. 86 of 1996 by the Trial Court and the High Court in Criminal Appeal No. 209 of 2001."

4. It may be noted that the criminal appeal of S. Shankar was disposed of on the premise that he was not awarded any sentence of imprisonment by the Trial Court and the only sentence imposed upon him was fine of Rs.1,000/-, which he had already paid. The appeal was, consequently, not pressed on merits.

5. It seems that on receipt of the copy of the order passed by this Court, as reproduced above, the Principal Special Judge for CBI Cases, Hyderabad vide memo dated 22.10.2019 informed the Registrar General of the High Court that as per the draft judgment dated 31.12.2000 prepared by the then Presiding Officer of the Court, accused no.5 (S. Shankar) was sentenced to undergo simple imprisonment for one year under Section 120-B read with Section 406 of the Indian Penal Code, 1860 (in short 'IPC') and pay Rs.1,000/- (Rs.500/- on each count), in default of which, he would

undergo simple imprisonment for one further month. A clarification was, thus, sought from the High Court with regard to the orders passed by this Court, wherein it was observed that no sentence of imprisonment was imposed by the Trial Judge on S. Shankar - accused no.5.

6. Upon receipt of the communication dated 22.10.2019 from the Principal Special Judge for CBI Cases, Hyderabad, the Registrar General of the High Court vide memo dated 31.10.2019 requested the Secretary General of this Court to put up the matter before the Court for necessary orders as to the discrepancies with regard to the fate of the sentence of one year's imprisonment imposed upon accused no.5 (S. Shankar) in C.C. No.86/1996 by the Principal Special Judge for CBI Cases, Hyderabad and confirmed by the High Court in Criminal Appeal No.209 of 2001.

7. The letter of the Registrar General of the High Court was registered as a miscellaneous application and placed before this Court on the judicial side on 03.02.2020, when the following order was passed:

"Learned counsel appearing for the appellant - Accused 5 (S. Shankar) in Criminal Appeal No.1463 of 2009 submits that the Trial Court's Judgment produced by him before this Court was the same which he got from the Trial Court and according to him, he has not deleted any sentence as mentioned in the Trial Court's Judgment.

In view of that, we direct learned Secretary General to verify the said statement made by the learned counsel appearing for the appellant and submit a Report to this Court as early as possible.

List the matter after report is received in the matter."

8. In compliance with the above order, the Secretary General of this Court submitted a report on 03.04.2020, the relevant part whereof reads as follows:

"On perusal of the original file, the office report placed before the Hon'ble Court and the copy of judgment dated 31.12.2000 received with the letter dated 31.10.2019 from Registrar General High Court of Telangana, Hyderabad reveals that operative portion in the typed copy of the Judgment of Trial Court filed along with Criminal Appeal does not corroborate with the operating portion of the judgment dated 31.12,2000 furnished by the Registrar General, High Court for the State of Telangana - specifically with regard to the quantum of sentenced awarded to Accused No. 5 (S. Shankar).

The undersigned has, therefore, minutely perused the record of Criminal Appeal No.1463 of 2009. It is noticed that the learned counsel for the petitioner, while preparing synopsis, which pertains to list of dates starting from page no.23, has mentioned as under:

"The Petitioner herein (Accused No.5), along with four others, was tried by the Court of Special Judge for CBI Cases, Hyderabad, for the offence under Section 120-B read with Section 406 IPC. The learned Trial Court found the Petitioner guilty and sentence him to suffer simple imprisonment for a period of one year and also a fine of Rs.1.000/- in default of payment of fine. To undergo simple imprisonment for a period of one month. On a Appeal, the Hon'ble High Court dismissed the Appeal and confirmed the judgment and order of the Trial Court. Hence, the present Special Leave Petition.

(Emphasis now)

The underlined statement would explicitly demonstrate that the learned counsel for the petitioner was conscious of the fact that the learned Trial Court has sentenced

petitioner to suffer simple imprisonment for a period of one year and also to pay a fine of Rs.1,000/-. Therefore, the statement made by learned counsel before the Hon'ble Court appears to be incorrect. The report is accordingly submitted before the Hon'ble Court for kind consideration."

9. Taking cognizance of the report submitted by the learned Secretary General, this Court on 18.12.2020 passed the following order:

"The Court is convened through Video Conferencing.

After perusal of the Report submitted by the learned Secretary General of the Supreme Court, we are satisfied that the appellant - S. Shankar misled this Court by producing wrong copy of the judgment dated 31.12.2000 passed by the Special Judge for CBI Cases, Hyderabad.

Let, therefore, show-cause notice be issued to the appellant - S. Shankar as to why order dated 23.07.2019, passed by this Court, be not recalled and modified, and further suitable action be not taken against him.

Mr. Venkateswara Rao Anumolu, Advocate-on-Record, accepts notice on behalf of the appellant - S. Shankar. He seeks and is granted four weeks' time to file affidavit.

The Registry is directed to supply a copy of the Report submitted by the learned Secretary General of the Supreme Court to the state counsel.

List the matter thereafter."

10. The appellant (S. Shankar) has filed an affidavit dated 05.02.2021 pointing out, *inter alia*, that in the certified copy of the judgment passed by the Principal Special Judge for CBI Cases, Hyderabad in C.C. No.86/1996, there was no mention of the sentence of one year's simple imprisonment and, therefore, what he had submitted before

this Court in Criminal Appeal No.1463 of 2009 was a *bona fide* act based upon the certified copy of the judgment supplied to him.

11. We have heard Mr. R. Basant, learned senior counsel for the appellant (S. Shankar) and Mr. Vikramjit Banerjee, learned Additional Solicitor General on behalf of the CBI and perused the relevant record.

12. There seems to be some inconsistency in the operative part of the draft judgment available on the judicial record of C.C. No.86/1996 on one hand and the final certified copy of the same judgment on the other. Suffice it to say that in the certified copy, the relevant line regarding imposition of sentence of one year simple imprisonment on the appellant is conspicuous in its absence. While deciding Criminal Appeal No.1463/2009, this Court was always under the *bona fide* impression that no sentence of imprisonment was imposed on the appellant (S. Shankar).

13. The question as to whether any sentence of imprisonment was actually imposed on the appellant itself has now become debatable and it is strenuous for us to take a final view on this issue merely via comparison between the draft judgment and the certified copy thereof supplied to the appellant (S. Shankar). It is also difficult, at this stage, to determine whether any deliberate attempt to omit and/or to temper with the operative part of the

sentence in the certified copy of the judgment was made and, if so, who is responsible for it.

14. There is complete uncertainty with respect to the actual sentence the Presiding Officer intended to impose on the appellant, having found him guilty of the offences under Section 120-B read with Section 406 IPC. Since sentencing is an exercise to be undertaken by the Trial Court, after taking into consideration various factors, it appears to us to be more appropriate to direct the Principal Special Judge for CBI Cases, Hyderabad to decide afresh the quantum of sentence after taking into consideration all the attending circumstances. Having held so, it is imperative to recall the order dated 23.07.2019 to the extent of disposal of Criminal Appeal No.1463/2009 and substitute the same with a direction to the learned Trial Court to reconsider the issue of award of sentence to the appellant in accordance with law.

15. The parties are directed to appear before the Principal Special Judge for CBI Cases, Hyderabad on 04.09.2023.

16. It is clarified that we have not expressed any opinion on the merits of the case. The parties shall be at liberty to raise their respective pleas on the question of sentence before the learned Principal Special Judge for CBI Cases, Hyderabad.

17. The Miscellaneous Application No.204 of 2020 as well as Criminal Appeal No.1463 of 2009 are disposed of in above terms.

.....J.
(SURYA KANT)

.....J.
(ANIRUDDHA BOSE)

New Delhi;
August 01, 2023.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Miscellaneous Application No.204/2020 in CrI.A. No.1463/2009

(Arising out of impugned final judgment and order dated 23-07-2019
in CrI.A. No.1463/2009 passed by the Supreme Court Of India)

S. SHANKAR

Appellant(s)

VERSUS

STATE OF ANDHRA PRADESH REP. BY CBI

Respondent(s)

(IA No.19778/2021 - CONDONATION OF DELAY IN FILING)

Date : 01-08-2023 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE ANIRUDDHA BOSEFor Petitioner(s) Mr. R. Basant, SR. Adv.
Mr. A. Chandramohan, Adv.
Mr. Sunny Kumar, Adv.
Mr. Sarath S. Janardanan, Adv.
Mr. Venkateswara Rao Anumolu, AORFor Respondent(s) Mr. Vikramjit Banerjee, ASG
Ms. Sansriti Pathak, Adv.
Ms. Meera Patel, Adv.
Ms. Seema Bengani, Adv.
Mr. V.V.V. Pattabhi Ram, Adv.
Mr. Rahul Tanwani, Adv.
Mr. Anas Zaidi, Adv.
Mr. Arvind Kumar Sharma, AOR
Mr. B. Krishna Prasad, AORUPON hearing the counsel the Court made the following
O R D E R

Delay in filing the affidavit is condoned.

The miscellaneous application as well as Criminal Appeal
No.1463 of 2009 are disposed of in terms of the signed order.

All pending applications, if any, stand disposed of.

(ARJUN BISHT)
COURT MASTER (SH)(PREETHI T.C.)
COURT MASTER (NSH)

(signed order is placed on the file)