

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA
CRIMINAL APPEAL No.279 OF 2021

JUDGMENT: *(Per Hon'ble Sri Justice C.Praveen Kumar)*

Since the matters, which are listed before the second Court are directed to be listed before the third Court, the present criminal appeal is listed before this Court (third Court) under the caption 'for appearance'. On 04.09.2021, a learned Single Judge of this Court directed listing of this appeal before appropriate Bench, after obtaining orders from the Hon'ble the Chief Justice. Pursuant thereto, on 07.09.2021, the Hon'ble Chief Justice directed listing of the matter before Division Bench-III. The relevant portion of the order is as under:-

“It is respectfully submitted that as per Roster, the provision of Criminal Appeals relating to Division Bench is with Hon'ble Division Bench-III (Hon'ble Sri Justice C.Praveen Kumar and Hon'ble Sri Justice B.Krishna Mohan).

Respectfully submitted for orders as to posting of CrI.A.No.279 of 2021 before the Hon'ble Division Bench-III.”

2. However, the matter was listed before Division Bench-II on 15.09.2021, wherein this Court admitted the appeal and directed respondent Nos.2 to 5 to appear before the trial Court within a fortnight and upon their appearance, the trial Court was directed to release them on bail to its satisfaction pending hearing of the appeal. Though the matter was directed to be listed before Division Bench-III, for the reasons best known, the Registry listed the matter before Division Bench-II again on 28.04.2022, 04.05.2022 and 06.05.2022.

3. When the matter is taken up for hearing today, this Court directed Registrar (Judicial) to explain as to why the matter was listed before Division Bench-II instead of Division Bench-III as directed by the Hon'ble Chief Justice, to which, he submitted an explanation, in the form of a note, stating that the learned Judge presided over by Division Bench-III was on leave from 06.09.2021 to 17.09.2021 and as such, the matter was listed before Division Bench-II since the roster of Division Bench-III was taken up by Division Bench-II. But as seen from the docket proceedings, even on subsequent dates, the matter was listed before Division Bench-II. The Registrar (Judicial) states that since the matter was directed to be listed as per roster, it was listed before Division Bench-II, but the note of the Hon'ble Chief Justice does not anywhere show that it has to be listed as per roster, instead there is a direction for posting before Division Bench-III.

4. On 26.04.2022, Sri V.Roopesh Kumar Reddy, learned counsel for the appellant, addressed a letter to the Registrar (Judicial) for listing of this appeal 'for withdrawal'. His letter was based on letter dated 24.03.2022 written by his client to him. But no orders are passed on the said letter though it was listed under the caption 'for withdrawal'. Basing on the said letter, the matter was listed on 28.04.2022. Without passing any orders on the said letter, this Court directed appearance of the appellant before this Court.

5. On 04.05.2022, the appellant was present on which date the appellant was directed to be present on 06.05.2022 as well. On 06.05.2022, this Court passed the following order:

“6. At this stage, learned counsel for the respondents no.2 to 5, submitted that they may be given one opportunity to file an affidavit as to how they shall ensure that the due share of the deceased, who was their step brother and son of the appellant, goes to their side of the family.

7. Having regard to the aforesaid, by way of extraordinary indulgence, the matter be listed on 16.06.2022, when an affidavit shall be filed jointly by all the accused to show their *bona fide* in the matter. On the next date, the appellant and the respondents no.2 to 5 shall be present in Court.”

6. Today when the matter is taken up for hearing, the appellant is present before this Court. The appellant, who is present before this Court, is identified by her counsel Sri V.Roopesh Kumar Reddy. When examined, she states that she wants to withdraw the criminal appeal filed by her and as directed by this Court on 06.05.2022, respondent Nos.2 to 5 herein filed their affidavit. It would be appropriate to refer to paragraph Nos.5 to 8 of the affidavit, which are as under:-

“5. I submit that soon after the death of my father, our family lawyer Sri S.M.Shaida mediated the property issues and accordingly on agreed terms appellant herein accepted to receive Rs.21,00,000/- in cash, 40 ankanams vacant site in Nellore town in the name of her daughter Shaik Talat Sulthana, and a residential house of 15 Ankanams valued at 15,00,000/- at A.K. Colony, Buja Buja Nellore, Nellore Town.

6. I submit that accordingly on 24.04.2010 my elder brother 4th respondent herein given Rs.10,00,000/- through cheques bearing Nos.422931 to 422935 of Indian Overseas Bank A/c No.2129010000 to the appellant and three children namely 1. Shaik Tarif alias Saleem, 2. Shaik Tasleem, and 3. Shaik Talat Sulthana, and that balance of Rs.11,00,000/- arranged by relatives on raising funds and the amounts totaling 21,00,000/- were fixed in their names

with the help of family lawyers Sri S.M.Shaida in the same bank.

7. I submit that myself and 3rd respondent with our share of the property raised bank loans from Syndicate Bank, Nellore town and doing small business for our livelihood. 4th respondent separated doing petty works on his own.

8. I submit that the Senior Civil Judge Court, Nellore in O.S.No.264/1992 decreed on the schedule of properties divided into 8 shares and that my father got 2 shares from the above property. Aggrieved on the judgment and decree my junior paternal uncle Shaik Basheer appealed the matter and it is pending till the recent past, and all the members to the above proceedings agreed for the peaceful and amicable settlement to divide the properties. In that we get two shares of the property and I and my brothers who are 3rd and 4th respondents herein have no objection to give half share to the appellant and we all give that share and register in her name.”

The above paragraphs clearly indicate the arrangements made with regard to payment of money to the appellant as well. In view of the above, the request of the appellant for withdrawal of the appeal is accepted.

7. Accordingly, the Criminal Appeal is dismissed as withdrawn.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE VENKATESWARLU NIMMAGADDA

Date: 16.06.2022
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AND
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DATE: 16.06.2022

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