

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1415 OF 2018
[@ SPECIAL LEAVE PETITION (CRL.) NO. 9340 OF 2017]

MALLANNA & ORS.

Appellant (s)

VERSUS

THE STATE OF KARNATAKA & ANR.

Respondent(s)

WITH

CRIMINAL APPEAL NO(S). 1416 OF 2018
[@ SPECIAL LEAVE PETITION (CRL.) NO. 9514 OF 2017]

J U D G M E N T

KURIAN, J.

1. Leave granted.

2. Heard Sh. R. Basant, learned senior counsel appearing for the appellants and Mr. V. N. Raghupathy, learned counsel appearing for the State. Accused No. 1 has been convicted under Sections 354 and 448 IPC read with Section 3(1) (xi) of the SC/ST (Prevention of Atrocities) Act, 1989, whereas Accused Nos. 2, 3 and 4 have been convicted under Section 448 r/w 34 IPC read with Section 3(1)(x) of the Act in Special Case No. 22 of 2010.

3. The following order was passed on the sentence :-

"The accused No.1 Bhikshawath is hereby convicted for an offence punishable U/sec.448 of Indian Penal Code and

sentenced to undergo simple imprisonment for a period one year and to pay a fine of Rs. 1000-00. In default to pay fine, the accused shall further undergo simple imprisonment for a period of three more months.

Further, the accused No.1 is hereby convicted for an offence punishable U/sec. 354 of Indian Penal Code and sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs. 1,000-00. In default to pay fine, the accused shall further undergo simple imprisonment for a period of three more months.

Further, the accused No. 1 is also convicted for an offence punishable U/sec. 3(1)(xi) of SC/ST (Prevention of Atrocities) Act 1989 and sentenced to undergo simple imprisonment for a period of two years and to pay fine of Rs. 1000-00. In default to pay fine, the accused shall further undergo simple imprisonment for a period of three more months.

The accused No. 2 Mallanna, accused No. 3 Anaveerappa and Accused No. 4 Basavaraj are also convicted for the offence punishable u/sec. 448 R/w of 34 of Indian Penal Code and sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs. 500-00 each. In default to pay fine, the accused shall further undergo

simple imprisonment for a period of three more months.

Further, the accused No. 2, 3 and 4 are also convicted for an offence punishable u/sec 3(1) (x) of SC/ST (Prevention of Atrocities) Act, 1989 and sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs. 500-00 each. In default to pay fine, the accused shall further undergo simple imprisonment for a period of three more months"

4. The conviction has been upheld by the High Court. An affidavit dated 22.08.2017 filed by the defacto complainant has been produced before us by way of additional documents. Paragraphs 2 and 3 of the affidavit read as under :-

"2. The deponent is the complainant, the deponent says and submits that the incident in question took place on 27.01.2008 between her and the Petitioner. In the said incident she is the victim. The learned District & Sessions Judge, Yadagiri by his judgment and order dated 08.06.2011 had pleased to convict the petitioner for the offence punishable under section 448, 254 of IPC & U/Sec. 3(1(xi) of SC/ST (Prevention of Atrocities) Act, 1989. The petitioner thereafter preferred Criminal Appeal No.3607/2011 before the Hon'ble High Court of

Karnataka. The Hon'ble High Court by its judgment and order dated 28.04.2017 has pleased to confirm the judgment of the Ld. Trial Court. Thereafter Petitioner has filed the Special Leave Petition before this Hon'ble Court and the same is pending for consideration.

3. That the deponent further submits that the incident in question took place on 27.01.2008 i.e. almost before 09 years due to misunderstanding and in the spur of moment. The Petitioner and the deponent to the same clan and they all live in same city. With passage of time, the relations between the petitioner and the deponent have been very cordial. The petitioner and the deponent are now closely related. The petitioner's land and deponent's families participate in the functions of each others. With the huge time gap, the grudges amongst each other have vanished away and have taken a shape of friendship. The petitioner is the only earning member of the family. They have old age parents, wife and children to look after, their entire family would suffer irreparable loss if the petitioner go behind bars at this stage. The deponent does not have a slightest desire to make the petitioner undergo the remaining sentence. Therefore, in the interest of both the parties and so also in the interest of the peace and harmony between both the

families, the complainant has filed his affidavit seeking permission to compound the offence"

5. We have also gone through the evidence available on record. Having heard the learned counsel appearing on both sides and also the defacto complainant, we are of the view that the conviction need be sustained only in the case of Accused No. 1. Accordingly, the appeals are allowed as follows :-

i) The conviction of Accused No. 1 under Sections 354 and 448 IPC read with Section 3(1)(xi) is sustained. The mandatory minimum period of sentence is six months. We are informed that the first accused has undergone a sentence of around one year. Therefore, the sentence is limited to the period already undergone.

ii) As far as Accused Nos. 2, 3 and 4 are concerned, we set aside their conviction and acquit them of the charges.

.....J.
[KURIAN JOSEPH]

.....J.
[HEMANT GUPTA]

New Delhi;
November 19, 2018.