

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1511 OF 2021  
(SLP(CrI.) No. 10306/2019)

KRISHNAN & ANR.

Appellant(s)

VERSUS

STATE BY THE DEPUTY SUPERINTENDENT OF POLICE & ANR. Respondent(s)

O R D E R

Leave granted.

As we are inclined to pass an order of remand to the High Court, we need not refer to the facts in detail.

The impugned order by the High Court of Judicature at Madras in Criminal Revision No. 1516/2013 enhances the sentences imposed on the appellants for offences under Sections 341, 294(b), 506(ii) and 447 of the Indian Penal Code. It is noticed, however, that the appellants though served notice, no legal representation was made on their behalf. In such a situation, the High court ought to have appointed an *Amicus Curiae* in the absence of counsel as observed by this Court in *Parveen v. State of Haryana*.<sup>1</sup> It is to be noted that the judgment and order of sentence passed by the Court of Principal Sessions Judge, Vellore District dated 4<sup>th</sup> December 2006 was challenged by the victim/revision petitioner in the aforementioned criminal revision filed in 2013. The delay was condoned on 13<sup>th</sup> December

<sup>1</sup> Order dated 16<sup>th</sup> November 2020 in Criminal Appeal Nos.750-751 of 2020

2013. Thereupon, the revision petition remained pending and had come up for hearing after almost five years on 24<sup>th</sup> October 2018, when the impugned order was passed. The impugned order mentions that the notice has been served to the appellants herein and their names have been printed in the cause list but there was no representation on their behalf. There is lack of clarity on when the notice was actually served and whether the appellants were informed that the criminal revision will be taken up for final hearing. Therefore, it appears the *ex parte* enhancement of sentence is against the statutory mandate of the law as delineated in the conjoint reading of Section 401(1) and first proviso to Section 386 of the Code of Criminal Procedure, 1973. These sections adumbrate an opportunity of showing cause before enhancement of sentence in criminal revision. This opportunity, as held in *Govind Ramji Jadhav v. State of Maharashtra*,<sup>2</sup> mandates that the High Court should give the accused a reasonable opportunity of showing cause. Be that as it may, it is apparent that it is only the counsel for the petitioner and the State were heard. The court did not have the benefit of the arguments on behalf of the Appellants. In the given fact, in our opinion, the High Court was wrong in not appointing an *Amicus Curiae*. This being an accepted and admitted position, we quash and set aside the impugned order dated 24.10.2018 with an order of remand to the High Court to decide the revision petition afresh and in accordance with law.

We clarify that we have not expressed any opinion on merits.

<sup>2</sup> (1990) 4 SCC 718

Appellants as well as respondents are directed to appear before the High Court on 17<sup>th</sup> December, 2021, when the date of hearing will be fixed. Separate notice is not required to be issued.

The appellants would continue to remain on bail on the bonds furnished by them pursuant to order dated 13.11.2019 passed by this Court. However, the High Court would be at liberty to call upon the appellants to execute fresh bail bonds on the terms and conditions to be fixed by the Court.

With the aforesaid directions, the appeal is partly allowed and disposed of.

All pending applications are disposed of.

..... .J.  
[SANJIV KHANNA)

..... .J.  
[ BELA M. TRIVEDI)

NEW DELHI  
29TH NOVEMBER, 2021

ITEM NO.24

Court 16 (Video Conferencing)

SECTION II-C

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 10306/2019  
(Arising out of impugned final judgment and order dated 24-10-2018  
in CRLRC No. 1516/2013 passed by the High Court of Judicature at  
Madras)

KRISHNAN & ANR.

Petitioner(s)

VERSUS

STATE BY THE DEPUTY SUPERINTENDENT OF POLICE & ANR.Respondent(s)

(IA No. 169235/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT

IA No. 169236/2019 - EXEMPTION FROM FILING O.T.

IA No. 170770/2019 - PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURES)

Date : 29-11-2021 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA  
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Mr. V. Karthikeyan, Adv.  
Mr. A. Karthik, AOR  
Mr. Saaketh Kasibhatla, Adv.  
Ms. Smrithi Suresh, Adv.

For Respondent(s) Mr. Colin Gonsalves, Sr. Adv.  
Mr. Shiyas KR,, Adv.  
Mr. Satya Mitra, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is partly allowed and disposed of in terms of the  
Signed Order.

All pending applications are disposed of.

(SONIA BHASIN)  
COURT MASTER (SH)

(ANITA RANI AHUJA)  
ASSISTANT REGISTRAR

[Signed Order is placed on the file]