

Makkapati Nagaswara Sastri

Vs

S. S. Satyanarayan

Criminal Appeal No. 45 of 1974

(O Chinnappa Reddy, R. S. Sarkaria JJ)

18.09.1980

JUDGMENT

P. S. SARKARIA, J. –

1. This appeal is directed against an order dated March 20, 1973 of the High Court of Andhra Pradesh whereby it accepted a reference made by the Additional Sessions Judge, West Godavari at Elura under Section 435 read with Section 438 of the Code of Criminal Procedure with the recommendation that the order of the Additional First Class Magistrate, Elura in CrI. M.P. No. 163 of 1971 refusing to give direction to the respondent to hand over all the records, accounts, properties, cash etc. of Sahakara Parapathi Sangham, Pragadavaram, to the petitioner, be set aside and revised. It appears from the impugned order that no notice of the date of hearing was issued to the respondent or his counsel. A note appears to have been added to the impugned order later which reads as follows :

It is true that the case has been disposed of without hearing the counsel for the respondent as he could not appear at the time of the hearing because his name was not printed in the cause list. But this is a revision case where the respondent is not entitled to be heard as of right. Having regard to the facts of the case, I do not think any review of the order already passed in necessary.

2. This view taken by the High Court is manifestly contrary to the audi alteram partem rule of natural justice which was applicable to the proceedings before the High Court. On this short ground we think that the order of the High Court does not deserve to be maintained. Accordingly, we set aside that order and send the case back to the High Court with the direction that it should dispose of CrI. R. No. 411 of 1972 within two months from the receipt of a copy of this order, after hearing both the parties.

3. The appeal is disposed of in terms of the above order.

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