

THE HON'BLE SMT. JUSTICE ANIS

CRIMINAL REVISION CASE No.1116 OF 2007

ORDER:

This revision is filed by the petitioner under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') against the Judgment, dated 07.08.2007, passed by the I Additional Sessions Judge, Karimnagar, in Criminal Appeal No.72 of 2006 whereby and whereunder the learned Sessions Judge confirmed the Judgment, dated 26.04.2006, passed by the Judicial Magistrate of First Class at Sulthanabad, wherein the learned Magistrate found the accused guilty for the offence under Sections 135(1), 136(1)(f) read with Section 136(2)(b) of Representation of Peoples Act, 1951 (for short, 'the Act, 1951') and convicted.

02. The petitioner is the accused and the respondent is the complainant in C.C. No.491 of 2003. The parties will hereinafter be referred to as arrayed before the Court below for the sake of convenience.

03. The case of the prosecution is that, P.W.1 was appointed as Polling Officer for election of Water Users Association at Peddakomira (V); P.W.2 and one N. Rama Rao were appointed as Assistant Polling Officers for the same election. The accused and P.W.9 were contested to the post of Territorial Council No.7 of Water Users Association, Peddakomira (V); in that election, P.W.3 was acted as polling agent of P.W.9. On 23.10.2003 at 01.00 P.M. the polling was completed for the said elections and while P.W.1 sealing the

ballot box in presence of P.W.2 and other Polling Officers, the accused obstructed the duties of P.W.1 and taken away the ballot box forcibly, thrown the same in SRSP canal, due to which, valid ballot papers were damaged and when the Polling Officers objected the accused threatened them with dire consequences. After receipt of report, the S.I. of Police, Pothkapalli Police Station, registered a case in Crime No.91 of 2003 for the offence punishable under Sections 135(1), 136(1) (f) of the Act, 1951 and under Sections 448, 427, 186 and 506 I.P.C. and investigated into; during the course of investigation, he recorded the statement of witnesses and seized the ballot boxes in presence of P.Ws.7 and 8; after completion of investigation, laid charge sheet into the Court.

04. During the course of trial, P.Ws.1 to 10 were examined and Exs.P.1 to P.10 and M.O.1 were marked.

05. The trial court, after considering the evidence on record, found the accused guilty for the offence punishable under Sections 135(1), 136(1) (f) read with 136(2)(b) of the Act, 1951 and further held that the offences punishable under Sections 448, 427, 186 I.P.C. for which the cognizance was taken are the facts combined and taken into consideration is the offence alleged and proved under the Act, 1951 and further held that the prosecution not established the offence punishable under Section 506 I.P.C.

06. Aggrieved thereby, the revision petitioner/ accused preferred Criminal Appeal No.72 of 2006 before the Court of Sessions. By Judgment, dated 07.08.2007, the I Additional Sessions Judge, Karimnagar, dismissed the appeal and

confirmed the Judgment of the trial court.

07. Aggrieved by the concurrent finding of both the Courts below, the revision petitioner/ accused preferred the present revision.

08. Learned counsel for the revision petitioner vehemently contended that the revision petitioner was charged under Section 135(1), 136(1) (f) of Act, 1951, the said Act has no application for the elections conducted under the Andhra Pradesh Farmers' Management of Irrigation Systems Act, 1997 and there is no penal provision under the said Act for the charge levelled against the petitioner. It is also argued that the Act, 1951 only applies for the elections to the House of People and to the Legislative Assembly of a State, Legislative council of a State and prayed the Court to allow the Revision Petition.

09. The learned Public Prosecutor for the State of Telangana argued that the findings of both the Courts are based on oral and documentary evidence produced by the prosecution and the findings of both the Courts needs no interference and prayed the Court to dismiss the revision.

10. Now the point for consideration is, whether the petitioner is entitled to set aside the Judgment dated 26.04.2006 in C.C. 491 of 2003 on the file of Judicial Magistrate of First Class, Sulthanabad, Karimnagar, as confirmed in Criminal Appeal No.72 of 2006 dated 07.08.2007 on the file of I Additional Sessions Judge, Karimnagar by allowing the Revision Petition?

11. As per the evidence of P.W.1, he was the *de facto* complainant and was working as Head master at Primary School, Wadkapur; he was deputed as Polling Officer for

the election of Water Users Association; the revision petitioner is a contestant for that election. On 23.10.2003 at 1-00 p.m. the revision petitioner entered into the polling room and taken away the ballot boxes inspite of protest by P.W.1; and later he gave complaint to the police under Ex.P.1. P.W.2 also deposed that he was also present at the time of alleged act of the revision petitioner/ accused. The prosecution also examined P.W.9, who is opponent candidate to the revision petitioner/ accused. His evidence also shows that on the date of election, the accused taken away the ballot boxes. Thus, taking into consideration of the evidence on record, the Courts below sentenced the revision petitioner/ accused under Sections 135(1) and 136 (1) (f) read with 136(2)(b) of the Act, 1951 and convicted.

12. In the Courts below, it was not brought to the notice that the Act, 1951 has no application for the election of the Water Users Association under the Andhra Pradesh Farmers' Management of Irrigation Systems Act, 1997 under the above act offences and penalties are prescribed. Therefore, the contention of the petitioner that the Act, 1951 has no application to the present case is considered. The conviction and sentence against the petitioner under Sections 136(1) and 136(1) (f) read with 136(2) (b) of the Act, 1951 is not maintainable and the revision is liable to be allowed.

13. Accordingly, the revision is allowed setting aside the Judgment dated 26.04.2006 passed in C.C. No.491 of 2003 by the Judicial Magistrate of First Class at Sulthanabad, as confirmed in Criminal Appeal No.72 of 2006 by Judgment dated 07.08.2007 passed by the I Additional Sessions Judge,

Karimnagar.

14. Miscellaneous petitions, if any, pending in this revision shall stand closed.

ANIS, J

February 23, 2015

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