

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.96 OF 2008

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ORDER:

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This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner/A.3 challenging the judgment dated 24.07.2007, passed by the III Additional Sessions Judge, Warangal, in Criminal Appeal No.12 of 2007, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 353 of the Indian Penal Code, 1908 (for short 'IPC'), vide the judgment dated 02.01.2007 in C.C.No.488 of 2002 by the Judicial First Class Magistrate at Jangaon, was set aside and modified the sentence for the offence punishable under Section 341 r/w 34 IPC to pay fine of Rs.500/-.

2. The revision petitioner herein is A.3 and respondent herein is the complainant in C.C.No.488 of 2002 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The brief facts of the case are that one Bandela Rathnamma obtained a loan of Rs.19,415/- from PACS, Rebarthy village under Warangal Co-operative Central Bank, Narmetta Branch for bore well and motor. She paid some amount and avoided to pay the other instalments. While so, on 21.06.2002 at about 2.00 p.m., PW1 along with PWs 2 to 6 went to the house of one Bandela Rathnamma to collect the due amount and found that the house was locked. Thereafter, PWs 1 to 6 decided to seize the tractor, meanwhile Rathnamma arrived and quarrelled with bank officials. At that time, A.1, who is the son of Rathnamma along with A.2 to A.4 came there, abused PWs 1 to 6, caught hold of the shirt of PW6 and assaulted

PWs 5 and 6 with hands and torned the shirt of PW6. Further, A.1 to A.4 obstructed

PWs 1 to 6 from discharging their official duties and confined them till 5.45 p.m. They also threatened to set fire to the jeep. On receipt of the complaint from PW1, the police registered a case in Crime No.23 of 2002 for the offences punishable under Sections 323, 353 r/w 34 IPC. The Head Constable of Maddur Police Station recorded the statements of the witnesses. The S.I. of Police conducted the scene of offence panchanama. On 26.06.2002, the S.I. of Police arrested the accused and sent them for judicial custody, and after completion of investigation, he filed the charge sheet into the Court.

4. The learned Judicial First Class Magistrate, Jangaon, took cognizance of the case and examined A.1 to A.4 under Section 251 Cr.P.C. for the offences punishable under Sections 353, 341, 323 r/w 34 IPC against A.1 to A.4. During trial, to prove the case of prosecution, PWs.1 to 9 were examined and Exs.P1 to P8 were got marked.

5. After closure of the prosecution evidence, A.1 to A.4 were examined under Section 313 Cr.P.C putting all incriminating material available against them. Accused denied the material evidence and reported no oral or documentary evidence on their behalf.

6. The trial Court, after hearing the arguments and after perusing the record, acquitted A.1 to A.4 for the offence punishable under Section 323 IPC, but convicted A.1 to A.4 and sentenced to undergo simple imprisonment for six months and to pay fine of Rs.100/- each for the offence punishable under Section 353 IPC and to undergo simple imprisonment for six months and to pay fine of Rs.100/- each for the offence punishable under Section 341 r/w 34 IPC.

7. Aggrieved by the conviction and sentence passed by the trial Court, A.1 to A.4 preferred Criminal Appeal No.12 of 2007 before the

III Additional Sessions Judge, Warangal, where the Appellate Court after considering the evidence on record set aside the conviction and sentence under Section 353 IPC and modified the sentence for the offence punishable under Section 341 r/w 34 IPC to pay fine of Rs.500/- each, in default to undergo simple imprisonment for three months each instead of imprisonment of six months and fine of Rs.100/- each.

8. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.12 of 2007, only A.3 preferred the present revision case.

9. The learned counsel appearing for the revision petitioner/A.3 argued that the evidence of PW1 is interested in nature and it is without any corroboration, therefore his evidence cannot be considered to convict the revision petitioner under Section 341 IPC; that the other witnesses PWs 2 to 7 have not supported the case of prosecution and they were declared hostile by the prosecution; that PW2 never stated that A.1 to A.4 wrongfully restrained PWs 1 to 6 when they were discharging their official duties; that there is no evidence on record to prove the ingredients of Section 341 IPC; that both the Courts below erred in convicting the petitioner under Section 341 r/w 34 IPC, and therefore, prayed the Court to allow the revision by setting aside the judgment passed in Criminal Appeal No.12 of 2007, dated 24.07.2007 passed by the III Additional Sessions Judge, Warangal.

10. On the other hand, the learned Public Prosecutor argued that the evidence of PW1 is sufficient to convict the petitioner/accused and both the Courts rightly convicted the petitioner under Section 341 r/w 34 IPC; that the findings of the trial Court and the appellate Court need no interference and finally prayed the Court to dismiss the revision case.

11. Now, the point for determination is --

Whether the prosecution could bring home the guilt of revision petitioner/A.3 for the offence punishable under Section 341 r/w 34 IPC?

12. **Point:**

A perusal of the record shows that the revision petitioner along with three others were charge sheeted for the offences punishable under section 353, 341, 323 r/w 34 IPC. During the course of trial, nine witnesses were examined and out of them, PWs 1 to 7 are the official witnesses. Admittedly, PWs 2 to 7 have not supported the case of prosecution, hence the trial Court and the appellate Court acquitted the revision petitioner and others for the offences punishable under Sections 323 and 353 IPC respectively, but the appellate Court confirmed the conviction for the offence punishable under Section 341 r/w 34 IPC though modified the sentence.

13. The contention of the learned counsel for the revision petitioner is that basing on the evidence of PW1 alone, the trial Court as well as the appellate Court convicted the revision petitioner without any corroboration and though

PWs 2 to 7 are the official witnesses, they did not support the case of prosecution. A perusal of the evidence of PW1 shows that the revision petitioner along with others threatened PW1 that they would set ablaze the jeep by pouring petrol. In the cross-examination, PW1 admitted that he cannot say the jeep number in which he went to the house of A.1. Further, a perusal of the evidence of PWs 2 to 7 shows that on the date of alleged incident, 50 to 100 people were gathered and they have not stated anything regarding the offence committed by the revision petitioner. Admittedly, PWs 2 to 6 were present along with PW1 at the time of alleged incident and though they are the

officials belong to the PACS, they have not supported the evidence of PW1 and even not stated that the accused persons including the revision petitioner confined them wrongfully. Therefore, basing on the evidence of PW1, the trial Court as well the appellate Court erred in convicting the revision petitioner for the offence punishable under Section 341 r/w 34 IPC. Hence, the judgment of the appellate Court is liable to be set aside with regard to the conviction of the revision petitioner is concerned. Accordingly, the point is answered in favour of the revision petitioner.

14. Accordingly, the Criminal Revision Case is allowed. Conviction and sentence passed in Criminal Appeal No.12 of 2007 on the file of the III Additional Sessions Judge, Warangal, is set aside against the revision petitioner/A.3 and thereby, his bail bond shall stand cancelled. The revision petitioner/A.3 is also entitled for the refund of the fine amount.

15. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 12.02.2015
Anr