

THE HON'BLE MRS JUSTICE ANIS

CRIMINAL REVISION CASE No.101 of 2008

ORDER:

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 complainant challenging the order, dated 25.07.2007, in C.C.No.396 of 2003 passed by the III Additional Judicial Magistrate of First Class, Kakinada.

2. The revision petitioner herein is the complainant, whereas respondent Nos.2 and 3 herein are A-1 and A-2 in C.C.No.396 of 2003 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they were arrayed in the Calendar Case before the trial Court.

3. The complainant filed a private complaint before the learned III Additional Judicial Magistrate of First Class, Kakinada against A-1 and A-2 for the offences punishable under Sections 352, 323, 506 and 477 read with 34 of the Indian Penal Code, 1860 (for short, "I.P.C"). In the complaint, it is stated that he is a retired Lecturer residing in Pydah Apartments situated in Rangayyanaidu Street, Kakinada whereas A-1 and A-2 are residents of Rajavolu Village situated in Rajahmundry; that both the complainant and the accused are close relatives; that mother of the complainant also used to reside in Rajavolu Village; that there were some money transactions between complainant's mother and A-1; that A-1 approached the complainant's mother and requested her to lend money to meet medical expenses; that since there were no sufficient funds with her, she recommended her son i.e., the complainant to lend money to A-1; that accordingly, complainant lent Rs.20,000/- to A-1 on 16.8.2001 and the complainant obtained a pronote from A-1; that in spite of repeated demands, A-1 did not repay the amount due under the pronote; that on 29.8.2003, both the accused came to the house of complainant at 10 a.m., and asked the complainant to bring the pronote so that they will pay the entire dues; that believing their words, complainant gave the pronote to A-1, but A-1 mischievously torn away the pronote into pieces; that A-2 caught hold of the complainant; that A-1 threatened the complainant with dire consequences and so saying, A-1 beat the complainant indiscriminately and threatened that if he reveals the matter, he will face dire consequences, and fled away from the spot. The complainant gave report to I Town

Police Station, Kakinada, but no action was taken. Hence, a private complaint was filed against A-1 and A-2 on 11.9.2003.

4. The III Additional Judicial Magistrate of First Class, Kakinada took cognizance of the case and framed the charges for the offences punishable under Sections 352 and 506 read with 34 I.P.C., read over and explained to the accused, but they pleaded not guilty and claimed to be tried.

5. To substantiate its case, prosecution examined PWs.1 to 3 and Ex.P-1 was got marked.

6. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses. They denied the same. On behalf of the defence, no oral or documentary evidence was adduced.

7. The trial Court, after considering the evidence of P.Ws.1 to 3 and Ex.P-1, dismissed the calendar case on the ground that the prosecution has to prove its case independently beyond reasonable doubt and the prosecution failed to prove the guilt of the accused; that therefore, the accused are entitled to benefit of doubt and thus, acquitted the accused for the offences punishable under Section 352 and 506 I.P.C. Aggrieved by the judgment of the trial Court, the complainant preferred the present revision case.

8. Learned counsel for the complainant argued that the trial Court failed to believe the evidence of P.Ws.1 to 3, who gave evidence regarding the overt acts of the accused, and further, acquitted the accused on the ground that A-1 is an aged person and A-2 is a respectable person in the society. It is also argued that the trial Court erred in dismissing the calendar case on the ground of absence of medical bills or prescriptions to prove that the accused assaulted the complainant. It is also argued that there are no contradictions in the evidence of prosecution witnesses i.e., P.Ws.2 and 3 and non-examination of other flat owners is not fatal to the prosecution case. Further, the finding of the trial Court that P.W.3 is a planted witness for the sole reason that he is a colleague of the complainant is quite contrary to the well settled principles of the Apex Court in respect of interested witness. Further, on the sole

ground of interestedness, the calendar case cannot be dismissed and finally, prayed the Court to set aside the impugned judgment and to remand the matter to the trial Court for recording the order of conviction.

9. On the other hand, the learned counsel for respondent Nos.2 and 3 argued that the evidence of P.Ws.2 and 3 cannot be believed because they have not stated the reason for the quarrel between P.W.1 and the accused, and further, they have not spoken as to why the incident had taken place; that the complainant has also not examined the members of the flat owners as there were more than 20 flats situated in Pydah Apartments; that the evidence of P.W.1 shows that the accused indiscriminately beat the complainant, but the said fact was not proved because no medical certificate was filed, and it is also not mentioned in which hospital, he was treated; that no medical bills were filed to prove the allegation of indiscriminate assault; that no prudent person will give pronote without taking money and the evidence of P.W.1 in that regard cannot be believed; that the presence of P.W.3 at the scene of offence is also doubtful in view of the evidence of P.W.2; that the trial Court, after considering the evidence of P.Ws.1 to 3, rightly dismissed the calendar case and acquitted the accused; that the finding of the trial Court needs no interference of this Court and hence, prays to dismiss this revision case.

10. Now, the point for determination is:

"Whether the revision petitioner herein is entitled to the relief of setting aside the order, dated 25.07.2007, in C.C.No.396 of 2003 passed by the III Additional Judicial Magistrate of First Class, Kakinada as prayed for or not?"

11. **P O I N T:** Before going into the merits of the case, it is to be noted that the revisional jurisdiction of the High Court while examining an order of acquittal is extremely narrow. It ought to be exercised only in cases where the trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Further, the interference with the order of acquittal passed by the trial Court is limited only to exceptional cases when it is found that the order under revision suffers from glaring irregularity or has caused miscarriage of justice or when it is found that the trial Court has no jurisdiction to try the case or where the trial Court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence, which clinches the issue, has been overlooked.

12. Sections 352 and 506 I.P.C. reads as under:

“352. Punishment for assault or criminal force otherwise than on grave provocation:- Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

506. Punishment for criminal intimidation:- Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.-- and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which, may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

13. A perusal of the record shows that the complainant filed a private complaint against A-1 and A-2 on 11.9.2003 for the offences punishable under Sections 352, 323, 506 and 477 read with 34 I.P.C., but the trial Court framed the charges under Sections 352 and 506 read with 34 I.P.C. To prove the allegations, the complainant himself was examined as P.W.1 and got examined two witnesses. P.W.1, in his evidence, has stated that on 16.8.2001, he lent money of Rs.20,000/- to A-1; that in spite of repeated requests, he failed to repay that amount, but on 29.8.2003, A-1 and A-2 came to his house and asked him to bring the pronote so that they would discharge the entire amount and that believing the words of the accused, he gave the pronote to A-1, but A-1 mischievously torn away the pronote into pieces without discharging the said amount. P.W.1 also stated that A-1 and A-2 threatened him with dire consequences and also beat him indiscriminately. P.W.1 in his evidence has further stated that at the time of lending money, one N.Sathiraju and his cousin - V.Sreeranganayakulu were present. To prove his evidence, he got examined P.Ws.2 and 3. P.Ws.2 and 3 are his friends and P.W.2 stated in his evidence that except himself, there was no other person present at the time of the incident whereas P.W.1 examined P.W.3 as if he was also present at the time of the incident. P.W.1 stated in his evidence that after the incident, he went to the hospital and took treatment. Considering the evidence of P.Ws.1 to 3, the trial Court acquitted the accused for the offences punishable under Sections 352 and 506 I.P.C.

14. A perusal of the evidence of P.Ws.1 to 3 shows that the reason given by P.W.1 is that on 29.8.2003, the accused came to his house and asked him to return the

pronote as they want to discharge the said amount. A prudent person always takes money and then, hands over the pronote to the person, who executed the same, but in this case, strangely, P.W.1 handed over the pronote to the accused. The accused failed to discharge the amount under the pronote and torn the pronote into pieces. To prove the transaction, the complainant must examine the persons, who were present at the time of lending the money. According to P.W.1, at the time of lending the money, one N.Sathiraju and his cousin - V.Sreeranganayakulu were present. To prove the execution of the pronote, these witnesses are very much important to show that on 16.8.2001, the complainant gave Rs.20,000/- to the accused and the accused executed the pronote in their presence, but the said fact was not proved by producing the evidence of N.Sathiraju and V.Sreeranganayakulu by the complainant for the reasons known to him.

15. Now, coming to the allegation that on 29.8.2003, accused came to the house of the complainant and received the pronote without discharging the loan amount and torn the pronote into pieces, except the evidence of P.W.1, there is no other evidence to support this contention. If really the accused torn the pronote into pieces and taken away the pieces with them, there is no need for the accused to beat P.W.1. According to P.W.1, P.Ws.2 and 3 saw the incident, but P.Ws.2 and 3 did not state the reasons for the galata that took place between P.W.1 and the accused. Further, P.W.2 has not stated about the presence of P.W.3 at the time of the incident.

16. Learned counsel for the accused argued that the complainant is residing in Pydah Apartment and there are 20 flats in that apartment, and that none of the inmates of the flats was examined as witness to prove that on 29.8.2003, there was a quarrel between the complainant and the accused. According to P.W.1, due to indiscriminate beating of the accused, the complainant went to a private hospital and took treatment, but he failed to file any medical report to prove the same. Therefore, the contention of P.W.1 that he was assaulted by the accused on 29.8.2003 cannot be believed. The burden of proof lies on the complainant to prove that the accused assaulted him by using criminal force. The complainant must also prove that it is the accused who caused criminal intimidation on him. Except the evidence of P.W.1, no other independent witness was examined to prove that on 29.8.2003, the accused came to the house of complainant and torn the pronote into pieces without discharging the loan amount and attacked the complainant by beating him indiscriminately and also threatened him with dire consequences. The evidence of

P.Ws.1 to 3 is not sufficient to prove the ingredients for the offences punishable under Sections 352 and 506 I.P.C. Therefore, the trial Court, after considering the evidence on record, rightly passed the impugned judgment and the finding of the trial Court needs no interference by this Court, and the Criminal Revision Case is liable to be dismissed.

17. Accordingly, the Criminal Revision Case is dismissed confirming the order, dated 25.07.2007, in C.C.No.396 of 2003 passed by the III Additional Judicial Magistrate of First Class, Kakinada.

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

JUSTICE ANIS

Date: 02.04.2015

AMD

THE HON'BLE MRS JUSTICE ANIS

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Date : 02.04.2015

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