

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.508 of 2010

ORDER:

_____ This criminal revision case is filed under Section 397 read with 401 Cr.PC., by the petitioner–sole accused challenging the judgment dated 26.2.2010 in Criminal Appeal No.108 of 2008 on the file of the court of X Additional District and Sessions Judge, Krishna at Machilipatnam wherein and whereby the conviction and sentence imposed against the accused in C.C. No.476 of 2003 on the file of the court of Judicial First Class Magistrate, Nandigama was confirmed.

2. _____ The learned counsel for the petitioner–accused submitted that the findings recorded by the courts below are perverse; therefore, it is a fit case to allow the criminal revision case. The learned Public Prosecutor submitted that the findings recorded by the courts below are supported by evidence much less legally admissible evidence.

3. _____ The facts leading to filing of the present revision case are briefly as follows: On 27.9.2003, at about 10.00 P.M., P.W.1, the then Medical Officer, Government Hospital, Nandigama, questioned the irregularities in the cash-book. The accused, who was then working as Lower Divisional Clerk in Government Hospital, Nandigama on contract basis, grew wild and assaulted P.W.1. It is further alleged that the accused abused P.W.1 in filthy language and threatened her with dire consequences. Basing on the complaint lodged by P.W.1, the Station House Officer, Nandigama Police Station registered a case in crime No.150 of 2003 for the offences under Sections 353 and 506 IPC. After completion of investigation, the Investigating Officer filed the

charge sheet for the offences under Sections 353 and 506 IPC. The learned Judicial Magistrate of First Class, Nandigama has taken cognizance of the offences against the petitioner under Sections 353 and 506 IPC. In order to prove the guilt of the accused, the prosecution examined P.Ws.1 to 5 and marked Exs.P1 to P4. On behalf of the accused, no oral or documentary evidence was adduced.

4. The trial court, after having thoughtful consideration to the oral and documentary evidence available on record, arrived at a conclusion that the accused committed the offence punishable under Section 353 IPC, convicted him accordingly and sentenced to undergo simple imprisonment for a period of six months and pay a fine of Rs.1,000/-; in default of payment of fine, the accused shall undergo simple imprisonment for a period of one month. However, the trial court found the accused not guilty for the offence under Section 506 IPC and accordingly acquitted him. Feeling aggrieved by the conviction and sentence imposed by the trial court for the offence under Section 353 IPC, the accused preferred Crl.A.No.108 of 2008 on the file of the court of X Additional District and Sessions Judge, Krishna at Machilipatnam. The appellate court, after reappreciating the entire material available on record, arrived at a conclusion that the accused committed the offence punishable under Section 353 IPC and accordingly dismissed the appeal by confirming the conviction and sentence imposed by the trial court. Hence, the accused filed the present criminal revision case.

5. As per the testimony of P.W.1, on 27.9.2003 the accused picked up quarrel and assaulted her. At the relevant point of time,

P.W.1 is working as Medical Officer. P.Ws.2, 3 and 4, who are eye witnesses to the incident, fully supported the testimony of P.W.1. P.W.5 is the Investigating Officer. A perusal of Ex.P4—rough sketch of scene of offence clearly reveals that the incident took place in the office. The oral testimony of P.Ws.2 to 4 is coherent, cogent, convincing and is inspiring confidence of the court. In the cross-examination of P.Ws.2 to 4 nothing is elicited to shake their testimony. It is not elicited in the testimony of these three witnesses that they are speaking false due to animosity with the accused. The oral testimony of P.Ws.1 to 4 is cogent and convincing in all material aspects. Their testimony clearly reveals that the accused committed the offence punishable under Section 353 IPC. The finding of the trial court that the accused committed the offence punishable under Section 353 IPC is supported by oral and documentary evidence, which is legally admissible. As observed earlier, the appellate court reappraised the oral and documentary evidence available on record and arrived at a conclusion that the accused committed the offence punishable under Section 353 IPC.

In **K. Chinnaswamy Reddy v. State of A.P.**^[1], the apex court held as under:

7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High

Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion, justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.

In **State of Haryana Vs. Rajmal**^[2], the apex Court held as under:

14. In *State of A.P. v. Pituhuk Sreeinvasa Rao* {(2000) 9 SCC 537} this Court held that the exercise of the revisional jurisdiction of the High Court in upsetting concurrent finding of the facts cannot be accepted when it was without any reference, to the evidence on record or to the finding entered by the trial court and appellate court regarding the evidence in view of the fact that revisional jurisdiction is basically supervisory in nature.

15. It has been also held by this Court in *Amar Chand Agarwala v. Shanti Bose and Anr.* {(1973) 4 SCC 10} that the revisional jurisdiction of the High Court under Section 439 Code of Criminal Procedure is to be exercised, only in an exceptional case, when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice.

6. As per the principle enunciated in the cases cited supra, it has not been open for the High Court to interfere with the concurrent findings of the courts below especially by re-

appreciating the evidence in its revisional jurisdiction.

7. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the accused committed the offence punishable under Section 353 IPC. Viewed from any angle, I am unable to accede to the contention of learned counsel for the petitioner-accused that the findings recorded by the trial court are perverse.

8. Pending Criminal Revision Case, P.W.1 filed USR No.20245 of 2015 seeking permission of the court to permit her to compound the offence with the petitioner. It appears that during the pendency of the revision case, both the parties have settled the matter. At the time of the arguments, learned counsel for the petitioner-accused submitted that in view of the compromise between the parties, this court may take a lenient view so far as imposing of sentence is concerned. The petitioner attended the trial court as well as appellate court from 2003 to 2010. The petitioner is now working as Registered Medical Practitioner. Taking into consideration the facts and circumstances of the case, I am of the considered view that it is a fit case to modify the sentence by setting aside the imprisonment.

9. In the result, the criminal revision case is partly allowed. The sentence of simple imprisonment for a period of six months imposed against the petitioner-accused for the offence under Section 353 IPC is set aside. However, the sentence of fine amount of Rs.1,000/- in default of payment of fine the petitioner shall suffer simple imprisonment for a period of one month is confirmed. The trial court shall take necessary steps to realize the

fine amount from the accused if already not paid. Miscellaneous petitions if any pending in the criminal revision case shall stand closed.

T.SUNIL CHOWDARY, J

March 14, 2016.

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[\[1\]](#) AIR 1962 SC 1788

[\[2\]](#) (2011) 14 SCC 326