

THE HON'BLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.1286 of 2012

ORDER:

The petitioner-Accused No.1 preferred the present Criminal Revision Case by invoking the provisions under Sections 397 and 401 of the Code of Criminal Procedure being aggrieved by the judgment, dated 14.03.2011, passed in CrI.A. No.137 of 2008 by the I-Additional District & Sessions Judge, Srikakulam, Srikakulam District, whereby the learned Sessions Judge dismissed the appeal by confirming the conviction and modifying the sentence imposed against the petitioner by the Special Judicial Magistrate of First Class, (Prohibition & Excise Court), Srikakulam, in CC No.220 of 2007 vide judgment, dated 24.11.2008, whereby the learned Magistrate found the petitioner guilty of the offences under Sections 325 and 324 IPC and convicted and sentenced him to undergo simple imprisonment for a period of three years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of three months, for the offence under Section 325 IPC; and also sentenced him to undergo simple imprisonment for a period of one year for the offence under Section 324 IPC.

The case of the prosecution is that on 15.05.2007 during night hours at 10.00 p.m., the petitioner - A1 went to the house of PW.1 and questioned PW.3 to give Rs.50,000/- towards his share from the sale proceeds of property of PW.3. Then, an altercation took place between PW.3 and A1, and A1 slapped PW.3 and kicked her with his leg, due to which PW.3 fell down. Immediately, PWs.1 and 2 intervened, then A2, who is the sister of the petitioner, caught hold PW.1 and the petitioner beat him with a karate ring on his right eye, due to which, PW.1 sustained injury on his right eye and also beat him with a stick on his left

fore arm and kicked PW.2 also on her stomach and beat her with a stick on her left leg. PW.4, who also sustained simple injuries, took the injured to the hospital. PW.1 gave report to the police and basing on the same, a case in Crime No.105 of 2006 was registered for the offences under Sections 326 and 324 r/w.33 IPC against the petitioner and A2. On completion of investigation, the Sub-Inspector of police, Srikakulam II-Town Police Station filed charge sheet.

The case was taken on file against the petitioner and A2 for the offences under Sections 326 and 324 IPC. On appearance of the petitioner and A2, the charges were read over and explained to them, for which, they pleaded not guilty and claimed to be tried.

To substantiate its case, the prosecution examined PWs.1 to 8 and got marked Exs.P-1 to P-7 and MO.1. On behalf of the accused, no oral or documentary evidence was adduced.

The trial Court, after considering the evidence on record, found the petitioner – a1 guilty of the offence under Sections 325 and 324 IPC and found A2 guilty of the offence under Section 324 r/W.34 IPC, and accordingly, convicted them and sentenced the petitioner – A1 to undergo simple imprisonment for a period of three years and also to pay fine of Rs.5,000/- for the offence under Section 325 IPC and to undergo simple imprisonment for a period of one year for the offence under Section 324 IPC, in default of payment of fine, to undergo simple imprisonment for a period of three months; and also sentenced A2 to undergo simple imprisonment for a period of one year for the offence under Section 324 r/w.34 IPC. Challenging the same, the petitioner and A2 preferred appeal in Crl.A. No.137 of 2008 before the

I-Additional District & Sessions Judge, Srikakulam, and the learned Sessions Judge partly allowed the appeal by confirming the conviction recorded by trial Court against the petitioner and A2 for the above offences and also confirmed the sentence against the petitioner for the offence under Section 325 IPC and converted the sentence of imprisonment recorded against the petitioner and A2 for the offences 324 and 324 r/w.34 IPC, respectively, to fine of Rs.1,000/- each, vide judgement impugned. Challenging confirmation of conviction and sentence against the petitioner, the present revision is filed by him.

Heard and perused the material available on record.

On perusing the judgments of both the Courts below, this Court is of the view that since the findings of both the Courts below are concurrent in nature, this Court is not inclined to interfere with the factual aspects of the case.

When this Court pointed out that there are no merits in the revision, learned counsel for the petitioner-A1 restricted his arguments to the quantum of sentence, by submitting that the petitioner has suffered substantial period in the prison and that leniency may be shown while imposing sentence.

Considering the facts and circumstances of the case and also considering that the case pertains to the year 2007, the sentence of imprisonment imposed against the petitioner by the trial Court, as confirmed by the lower appellate Court, can be modified.

In the result, the conviction recorded by the Special Judicial Magistrate of First Class, (Prohibition & Excise), Srikakulam, in CC No.220 of 2007 vide judgment, dated

24.11.2008, as confirmed by the I-Additional District & Sessions Judge, Srikakulam, in Crl.A. No.137 of 2008, vide judgment, dated 14.03.2011, for the offences under Section 325 and 324 IPC, is confirmed. However, the sentence of imprisonment imposed by the trial Court, as confirmed by the appellate Court, against the petitioner for the offence under Section 325 IPC is modified to that of the period already undergone by the petitioner and the fine amount imposed against him for the offences under Sections 325 and 324 IPC is not interfered with.

Accordingly, the Criminal Revision Case is partly allowed. Miscellaneous applications, pending if any, shall stand closed.

RAJA ELANGO, J

July 20, 2016.
KTL