

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1165 of 2008

ORDER:

1 This Criminal Revision Case is filed under Section 397 and 401 Cr.P.C. challenging the judgment dated 28.04.2008 passed in C.C.No.713 of 2005 on the file of the Court of the Chief Metropolitan Magistrate Vijayawada.

2 Heard Sri V.Subrahmanyam, the learned counsel for the revision petitioner and Sri Ravi Kumar Toleti, the learned counsel for the 2nd respondent and the learned Public Prosecutor.

3 The case of the prosecution in nutshell is as follows:

4 The accused No.1 sold 200.22 sq. yards of land in Plot No.8, R.S.No.108/1 to one Manne Nageswara Rao for Rs.14,070/- under a registered sale deed dated 13.05.1993. Subsequently the said Nageswara Rao expired. Thereupon the wife of said Nageswara Rao sold the said land to P.W.1 for a valuable consideration of Rs.25,100/- under a registered sale deed dated 07.01.2001. In the month of August 2004, A.1 with the assistance of A.2 and A.3 criminally trespassed into the land of P.W.1 and damaged janumu crop raised by P.W.1. Basing on the complaint lodged by P.W.1, the Station House Officer, Ibrahimpatnam Police Station registered a case in Cr.No.34 of 2005 for the offences punishable under Sections 447 and 427 of IPC and after completion of investigation the Station House Officer laid charge sheet against the petitioner for the offences punishable under Sections 447, 427 and 420 of IPC. The learned Magistrate has taken cognizance of the offences under Sections 447, 427 and 420 of IPC and numbered it as C.C.No.713 of 2005. During the pendency of the case before the trial Court, A.3 died and hence case against him was

abated. The learned Magistrate examined the accused No.1 and 2 under Section 239 Cr.P.C. and framed charges for the offences punishable under Sections 447, 427 and 420 of IPC, read over and explained to them in Telugu for which the accused pleaded not guilty and claimed to be tried.

5 To bring home the guilt of the accused for the offence punishable under Sections 447, 427 and 420 of IPC, on behalf of the prosecution P.Ws.1 to 9 were examined and Exs.P.1 to P.8 were marked. On behalf of the accused, no oral or documentary evidence was adduced.

6 After having a thoughtful consideration to the oral and documentary evidence available on record, the trial Court arrived at a conclusion that the prosecution failed to prove the guilt of the accused for the charged offences beyond all reasonable doubt and accordingly acquitted them of the said offences. Hence the present Revision Case by the de-facto complainant.

7 The learned counsel for the petitioner submitted that the trial Court has not properly appreciated the oral and documentary evidence available on record and acquitted the accused on erroneous grounds. He further submitted that the trial Court failed to consider that P.W.1 has purchased the property from the wife of Nageswara Rao under a registered sale deed for valuable consideration and hence the accused have no right whatsoever to enter into the land in question. He further submitted that the trial Court acquitted the accused on erroneous grounds.

8 **Per contra**, the learned counsel for the respondents/accused submitted that the oral testimony of P.Ws.1 to 5 and 7 falls short to

prove the guilt of the accused for the charged offences. He further submitted that the prosecution failed to prove in what way the first accused cheated the petitioner. He further submitted that no one was examined to prove the recitals of Exs.P.4 and P.5 as well as the FSL report to establish whether the accused have forged the signatures or not.

9 Now the point for determination in the Criminal Revision Case is:

“Whether there is any irregularity or illegality in the judgment passed by the trial Court, warranting interference of this Court while exercising revision jurisdiction under Sections 397 and 401 Cr.P.C.?”

POINT:

10 In order to appreciate the rival contentions, I feel it apposite to refer the case law on this aspect.

K. Chinnaswamy Reddy v. State of A.P.¹,

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

¹ AIR 1962 SC 1788

Court setting aside the order of acquittal in this case can be upheld on these principles.

In **Amar Chand Agarwalla Vs. Shanti Bose and Anr., etc.**² at para No.20 the Hon'ble apex Court held as follows:

“Even assuming that the High Court was exercising jurisdiction under Section 439, in our opinion, the present was not a case for interference by the High Court. The jurisdiction of the High Court is to be exercised normally under Section 439, Criminal Procedure Code, only in exceptional cases, when there is a glaring defect in the procedure or there is a manifest error of point of law and consequently there has been a flagrant miscarriage of justice. The High Court has not found any of these circumstances to exist in the case before us for quashing the charge and the further proceedings.”

The same principle was reiterated in **State of Haryana Vs. Rajmal and Another**³.

11 It is a settled principle of law that this Court can interfere with the findings of the trial Court while exercising jurisdiction under Sections 397 and 401 Cr.P.C. if there is any irregularity or impropriety.

12 Let me consider whether there is any legal flaw in the findings recorded by the trial Court.

13 As seen from the testimony of the prosecution witnesses, civil disputes are pending between the parties. As per the testimony of P.Ws.1 to 5 and 7, P.W.1 has not purchased the land in question directly from the accused No.1. Their testimony further reveals that the accused trespassed into their land. In the cross examination P.W.4 categorically deposed that he has not purchased the land from the accused. P.Ws.2 to 5 have in unequivocal terms deposed that they do not know about the dispute between the accused and P.W.1. Exs.P.4 and P.5 are thumb marks of the persons who got registered plots in R.S.No.108/1 of Jupudi village. The prosecution did not choose to

² (1973) 4 SCC 10

³ (2011) 14 SCC 326

examine the expert. Without examining the expert, it may not be possible for the Court to arrive at a conclusion that Exs.P.4 and P.5 bear the thumb marks of the accused No.1. There are number of contradictions and omissions in the testimony of prosecution witnesses. The testimony of P.W.1 to 7 is not cogent convincing and coherent with each other. In view of the above factual scenario, much weight cannot be attached to their testimony. The testimony of prosecution witnesses does not inspire the confidence of the Court.

14 The testimony of P.Ws.2 to 5 is no way helpful to the case of the prosecution to establish that P.W.1 purchased the land and he has been in possession of the land in question as on the date of the alleged incident.

15 So far as the offence under Section 420 of IPC is concerned, absolutely there is no material available on record to establish that the accused No.1 cheated P.W.1. The oral and documentary evidence available on record falls short to prove the guilt of the accused No.1 for the offence punishable under Section 420 of IPC.

16 A perusal of the oral testimony of the prosecution witnesses clearly establishes that the dispute between the parties is purely civil in nature. In such circumstances, it may not be possible for the Court to decide whether the accused have trespassed into the land in question or not.

17 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, this Court is of the opinion that it is not a fit case to interfere with the findings arrived

at by the trial Court while exercising revision jurisdiction under Sections 397 and 401 Cr.P.C and this revision case lacks merits.

18 Accordingly, this Criminal Revision Case is dismissed as devoid of merit. As a sequel, the miscellaneous petitions, pending in this Criminal Revision Case, if any, shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 21.10.2016.

Kvsn

