

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1903 OF 2006

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 16.11.2006, in CrI.A.No.35 of 2005, on the file of the I Additional District & Sessions Judge, Nellore, whereunder and whereby the conviction and sentence of the petitioner/accused to undergo Simple Imprisonment for a period of six (6) months and to pay a fine of Rs.3,000/- for the offence punishable under Section 325 IPC recorded in judgment, dated 29.11.2004, in C.C.No.411 of 2001, by the II Additional Judicial Magistrate of First Class, Nellore, was confirmed.

2. The brief facts, that are necessary for the disposal of the present Criminal Revision Case, may be stated as follows:

The accused is a Jailor in Nellore District Jail. The complainant is a resident of Parlapalli Village of Vidavalur Mandal. The offence took place in District Jail, Nellore. The complainant was sent for remand in February, 2000, in one excise case. The accused arranged a lawyer to obtain bail for the complainant by paying Rs.1,400/- which amount belonged to the complainant. The complainant obtained self-bail in the said case. The complainant went to the advocate for taking his money. When it came to the notice of the accused, he got angry with the complainant. After that, the complainant was sent to the District Jail, Nellore, on 08.01.2001 in another excise case. At that time, the accused, who is the Jailor in the District Jail beat the complainant with a stick on his left hand and caused a fracture injury to the complainant keeping the grudge in mind against the complainant for collecting the amount from the advocate. The complainant was produced before the Jail Doctor for treatment and he was treated for some days in Government Head Quarters Hospital, Nellore and X-ray was taken and it was confirmed that there was a fracture at the place of injury. Hence, the complaint.

3. The accused was examined under Section 239 Cr.P.C. and

when the charge under Section 326 IPC was framed, read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried.

4. To substantiate the charges, the prosecution examined P.Ws.1 to 9 and got marked Exs.P-1 to P-12.

5. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating evidence appearing against him in the evidence of P.Ws.1 to 9. He denied the same. On behalf of the accused, no witnesses were examined, but Ex.D-1 was marked.

6. The trial Court, after considering the evidence on record, found the accused guilty of the offence punishable under Section 325 IPC and sentenced as stated above. On appeal, the said conviction and sentence was confirmed. Hence, the present Criminal Revision Case.

7. Now the point for determination is whether the judgments of both the Courts below are correct, legal and proper?

8. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent and perused the material available on record.

9. Admittedly P.W.1, who is the injured is inmate in a jail being remanded to Judicial custody in connection with excise cases in the years 1999 and 2000. The offence took place in District Jail, Nellore, and P.W.1 was imprisoned on 08.01.2001 in connection with another excise case and P.W.1 was beaten by the accused on his left thigh and on his left hand wrist with a stick and he sustained fracture and P.W.1 was given treatment by P.W.2, who is the duty doctor of the jail and later he was sent back to the jail.

10. Learned counsel for the petitioner based his arguments on the ground that none of the independent witnesses supported the case of the prosecution. The fact remains that the occurrence took place within the premises of the District Jail, Nellore, where the accused is

also working as a Jailor and the inmate of the jail is the complainant, who was involved in various crimes. The prosecution cited the witnesses, but they could not able to examine them before the Court.

11. The fact remains that the complainant was treated on 08.01.2001, 09.01.2001 and also on 16.01.2001. The complainant was released on bail only on 23.01.2001 and in the meanwhile, the injuries sustained by him, which leads to fracture at the base of the 5th metacarpal bone on the left hand, were treated by P.W.2, the duty doctor and the doctor has also given his opinion to that extent. P.Ws.2 & 4, who are the Medical Officers, deposed before the Court regarding the fracture sustained by P.W.1 and non-examination of any independent witness is not fatal to the case of the prosecution and the effect of non-examination of independent witnesses varies based on the facts and circumstances of each and every case. In the present case, non-examination of any independent witness, except the injured person, will not cause any prejudice to the case of the prosecution, being it is a concurrent finding of the Courts on the factual aspect and also on legal aspect. This Court is also convinced with the findings of the Courts below. Hence, this Court is not inclined to interfere with the judgments of the Courts below.

12. Considering the facts and circumstances of the case and taking into consideration that the petitioner is retired from service, the Criminal Revision Case is allowed and the judgment, dated 16.11.2006, passed in CrI.A.No.35 of 2005, by the I Additional Sessions Judge, Nellore, confirming the judgment in C.C.No.411 of 2001, dated 29.11.2004, passed by the II Additional Judicial Magistrate of First Class, Nellore, is set aside and the petitioner/accused is acquitted of the offence under Section 325 IPC. The fine amount, if any, paid by the petitioner/accused is directed to be refunded to him. Bail bonds, if any, shall stand cancelled.

13. Accordingly, the Criminal Revision Case is allowed. Consequently, the Miscellaneous Petitions, if any, pending in this criminal revision case shall stand closed.

Date: 21st July, 2016

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