

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1164 of 2008

ORDER:

1 This Criminal Revision Case is filed under Section 397 and 401 Cr.P.C. challenging the judgment dated 23.04.2008 passed in C.C.No.694 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 son of P.W.1 by name Vijaya Sarathi purchased Ac.1.00 of land situated in R.S.No.108/1 of Jupudi village, from the second respondent for Rs.85,000/- under an agreement of sale dated 05.07.1989. The second respondent handed over the property to the son of P.W.1, who in turn divided the same into plots and sold it to different persons. It is the further case of the P.W.1 that the second respondent trespassed into the land in question and damaged the Janumu crop. P.W.1 lodged a complaint to the Station House Officer, Ibrahimpatnam Police Station, who in turn registered a case in Cr.No.35 of 2005 for the offences punishable under Sections 447 and 427 of IPC. After completion of investigation, the Station House Officer, Ibrahimpatnam Police Station laid charge sheet against the petitioner for the offences under Sections 447, 427 and 420 of IPC. The learned Magistrate has taken the case on file under Sections 447, 427 and 420 of IPC and numbered it as C.C.No.694 of 2005. The learned Magistrate examined the accused / second respondent 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 the accused / second respondent in Telugu for which the second respondent pleaded not guilty and claimed to be tried.

5 To bring home the guilt of the accused / second respondent for the offence punishable under Sections 447, 427 and 420 of IPC, on behalf of the prosecution P.Ws.1 to 6 were examined and Exs.P.1 to P.8 were marked. On behalf of the second respondent, 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 second respondent for the charged offences beyond all reasonable doubt and accordingly acquitted him 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 second respondent on erroneous grounds. He further submitted that the trial Court failed to consider that the son of P.W.1 has purchased the property from the second respondent and hence he has no right whatsoever to enter into the land in question.

8 **Per contra**, the learned counsel for the second respondent submitted that the oral testimony of P.Ws.1 and 5 is not trustworthy for consideration. He further submitted that the prosecution failed to prove that the son of P.W.1 purchased the land from the second respondent. He further submitted that no one was examined to prove

the recitals of Exs.P.7 and P.8 as well as the RFSL report to establish whether the second respondent has 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 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:

¹ AIR 1962 SC 1788

² (1973) 4 SCC 10

“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 P.W.1 is the competent person to speak whether his son purchased the property from the second respondent or not. In the cross-examination P.W.1 in unequivocal terms deposed that he filed civil suit against the second respondent in respect of the disputed land. P.W.3 in cross examination deposed in unequivocal terms that he does not know who is the owner of the land in question. P.W.2 deposed that he does not know who is in possession of the land in question as on the date of the alleged offence. P.W.4 did not support the case of the prosecution. P.W.5 is the Sub-Registrar through whom Exs.P.3 to P.5 were marked. Ex.P.6 was marked through the investigating officer.

14 As per the case of the prosecution the accused / second respondent forged the signatures. For one reason or the other, the

³ (2011) 14 SCC 326

prosecution did not choose to examine the expert in order to substantiate the stand taken by it. It may not be possible for the Court to arrive at a conclusion that the second respondent forged the signatures without examining the expert. For one reason or the other, P.W.1 did not place the agreement of sale alleged to have been executed by the second respondent in favour of his son. Absolutely, there is no material on record to establish that as on the date of the alleged offence P.Ws.1 and 3 were in possession of the land in question. A perusal of the oral testimony of the prosecution witnesses clearly establishes that a civil suit is pending between the parties. In such circumstances, it may not be possible for the Court to decide whether the second respondent has trespassed into the land in question or not.

15 The testimony of P.Ws.1 to 3 is no way helpful to prove the case of the prosecution. The material available on record clearly reveals that the lis involved between the parties is purely civil in nature. The trial Court has rightly considered the oral and documentary evidence available on record in right perspective and arrived at a conclusion that the lis between the parties is purely civil in nature.

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

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 revisional 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

