

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1865 of 2016

ORDER:

This Criminal Revision Case is filed under Section 397 read with 401 of Cr.P.C. challenging the judgment dated 19.06.2007 in Sessions Case No.23 of 2004 on the file of the Court of the I Additional Sessions Judge at Nalgonda.

2. During pendency of the revision, the second respondent died. Hence, the revision against the second respondent is dismissed as abated.

3. Sri D.Govardhana Chary, the learned counsel for the petitioner (*de facto* complainant), strenuously submitted that the trial Court failed to consider the explanation offered by PW.1 for delay in lodging the complaint. He further submitted that mere non-production of the partnership deed by itself is not a valid ground to disbelieve the prosecution version. He also submitted that the findings recorded by the Court below are perverse; therefore, it is a fit case to allow the revision.

4. *Per contra*, Sri Dilip Naik, Advocate, representing Sri Ch.Ravichandra, the learned counsel for respondent Nos.3 and 4 (A.2 and A.3), strenuously submitted that the prosecution miserably failed to assign reasons for delay in lodging the complaint. He further submitted that the oral testimony of PW.1 is not supported by PW.2, who is the alleged eye witness to the incident. He also submitted that the prosecution failed to prove the charges levelled against respondent Nos.3 and 4, and therefore,

they were rightly acquitted by the trial Court and absolutely, there are no grounds to interfere with the same.

5. The facts leading to filing of the present revision are briefly as follows:

Basing on the complaint of PW.1, the Sub-Divisional Police Officer, Suryapet, registered a case in Crime No.168 of 2003 under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the SC and ST Act'). After completion of the investigation, the investigating officer laid charge sheet against respondent Nos.2 to 4 for the offences punishable under Section 3(1)(x) of the SC and ST Act and Section 506 of I.P.C. The learned I Additional Sessions Judge, Nalgonda has taken the cognizance of offences punishable under Section 3(1)(x) of the SC and ST Act and Section 506 I.P.C. and numbered it as Sessions Case No.23 of 2004.

On appearance of the accused, the learned Sessions Judge framed charges under Section 3(1)(x) of the SC and ST Act and Section 506-II I.P.C. When the above charges were read over and explained to them in Telugu, they pleaded not guilty and claimed to be tried.

6. To bring home the guilt of respondent Nos.2 to 4, on behalf of the prosecution, PWs.1 to 5 were examined and Exs.P.1 to P.5 were marked. On behalf of the defence, no oral evidence was adduced, but Ex.D.1 was marked.

7. 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

respondent Nos.2 to 4 for the offences punishable under Section 3(1)(x) of the SC and ST Act and Section 506-II I.P.C. and accordingly acquitted them. Feeling aggrieved by the judgment of the trial Court, the *de-facto* complainant filed the present Criminal Revision Case.

8. Before adverting to the facts of the case, it is apposite to refer the following decisions:

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.

Shilok Bhardwaj v Runika Bhardwaj²,

12. In any case, it is well settled that the scope of revisional jurisdiction of the High Court does not extend to reappraisal of evidence. In exercise of revisional jurisdiction, the High Court can

¹ AIR 1962 SC 1788

² (2015) 2 SCC 721

interfere with the acquittal only if there is perversity in the order of acquittal.

Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke³,

14. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.

As per the principle enunciated in the cases cited supra, the Revisional Court shall not lightly interfere with the judgment of acquittal.

9. It is the case of PW.1 that on 03.06.2003, respondent Nos.2 to 4 abused him in the name of his caste. It is the further case of PW.1 that respondent Nos.2 to 4 threatened him with dire consequences. PW.2 is a close friend of PW.1. For one reason or other, PW.2 did not support the case of prosecution. PW.2 turned hostile to the prosecution case. PW.3 is none other than the son of PW.1. PW.3 being a son of PW.1, the possibility of distortion of facts cannot be ruled out completely. It is needless to say that the Court has to scrutinise the testimony of the interested witnesses meticulously so as to eliminate the exaggerations. Even as per the prosecution version, PW.3 is not an eye witness to the incident. Viewed from any angle, the testimony of PW.3 is not trustworthy for consideration.

³ (2015) 3 SCC 123

10. It is the case of PW.1 that he is having 14 paise share in Venkatasai Modern Binni Rice Mill (for short, 'rice mill') at Kuchipudi thanda of Suryapet. When respondent Nos.2 to 4 made an attempt to sell the rice mill, PW.1 demanded not to sell the rice mill or at least to the extent of his share. Except the oral testimony of PW.1, there is no other convincing evidence to establish that PW.1 is one of the partners in the rice mill. PW.3 deposed that he does not know anything about the partnership transaction. The investigating officer (PW.5) deposed that no partnership agreement was produced before him during the course of investigation. Except the self-served testimony of PW.1, there is no other evidence, much less cogent and convincing evidence, to establish that he is having 14 paise share in the rice mill. The prosecution failed to prove the motive for the alleged offence.

11. It is a settled principle of law that the Court cannot brush aside the prosecution version on the sole ground that there is a delay in lodging the complaint. The Court has to take into consideration the reasons for delay in lodging the complaint. If the prosecution put forth reasons, much less cogent and valid reasons for delay, the Court can place reliance on the prosecution version. The alleged incident took place on 03.06.2003, whereas the complaint was lodged on 15.11.2003. There is a delay of five months twelve days in lodging the complaint. PW.1 is not a rustic villager. A perusal of the record clearly reveals that PW.1 is very much aware of the nature of the litigation. Even assuming, but not conceding, that PW.1 could not lodge the complaint in time due to intervention of the village elders, nothing prevented him to cite the names of the mediators in Ex.P.1 – F.I.R. There is no

whisper in the testimony of PW.5 that the village elders made an attempt to settle the dispute between PW.1 and respondent Nos.2 to 4. The possibility of taking this type of plausible plea in order to overcome the laches on the part of prosecution cannot be ruled out completely. There is an abnormal delay of five months twelve days in lodging the complaint. The prosecution has not assigned reasons, much less cogent and valid reasons for delay in lodging the complaint. The trial Court considered the oral and documentary evidence in right perspective and arrived at a conclusion that the prosecution failed to assign the reasons for delay in lodging the complaint. I am fully agreeing with the finding recorded by the trial Court. As observed earlier, the prosecution miserably failed to prove the motive for the alleged offences. The finding of the trial Court that the prosecution failed to prove the guilt of respondent Nos.3 and 4 is supported by material on record.

12. 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 there is no illegality, irregularity or impropriety in the order passed by the trial Court, which warrants interference of this Court, by exercising the revisional jurisdiction under Section 397 of Cr.P.C. Hence, the revision lacks merits and *bona fides*.

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

T.SUNIL CHOWDARY, J

Date: 03.11.2016
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