

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.29 of 2005

ORDER:

This revision under Section 397 and 401 of Code of Criminal Procedure (fort short "Cr.P.C.") challenging the concurrent findings recorded by Judicial First Class Magistrate, Penukonda, Ananthapur in C.C.No.523 of 2001 by calendar and judgment dated 22.08.2003 finding the accused guilty for the offence punishable under Rules 11 to 13 of Registration of Foreigners Rules and sentenced the accused, who is the petitioner herein, to pay fine of Rs.1,000/- and in CrI.A.No.103 of 2003 the Additional Sessions Judge, Hindupur by judgment dated 16.12.2004 confirmed the findings recorded by the trial Court.

The present revision is filed under Section 397 and 401 of Cr.P.C. on various grounds. Learned counsel for the revision petitioners contended that both the Courts below erroneously recorded concurrent findings regarding non-compliance of Rule 11 to 13 of Registration of Foreigners Rules, 1992 and in the absence of specific finding, conviction and sentence passed by both the Courts below cannot be sustained and prayed to allow the revision setting aside the conviction and sentence passed by both the Courts below.

Learned Public Prosecutor for the state of Andhra Pradesh supported the judgment of both the Courts.

The complaint of the prosecution against the petitioner is that the petitioner contravened Rules 11 to 13 of Registration of Foreigners Rules, 1992. Rule 11 deals with report of absence from address. Rule 12 deals with change in registered address. Rule 13 deals with reports of change other than of address.

The trial Court and the appellate Court on appreciation of evidence concluded that the petitioner contravened Rules 11, 12 and 13 of the Registration of Foreigners Rules, 1992. But the present revision is filed under Section 397 and 401 of Cr.P.C. When such revision is filed, as a general rule, the High Court will not in revision interfere with a finding of fact and this is specially so, where there are concurrent findings of facts of the lower Courts. But in special and exceptional circumstances, the High Court is entitled to go into question of fact and do justice, though the power should be rarely exercised as held in “**S.P.S.Jayam & Co. v. Nehrusadan**”¹

In revision, the High Court usually accepts the findings on questions of facts recorded by a subordinate Court unless the finding is manifestly perverse or patently erroneous. The power of interference is to be exercised most sparingly and only when there appears to have been a miscarriage of justice or a perverse and unreasonable decision in view of the

¹ 1977 SC 1621

judgment of Apex Court in “**Bansilal v. Laxman**²” and “**Atiur Rahman v. State of Assam**³”

In view of the limited powers conferred on this Court under Section 401 of Cr.P.C., this Court unless come to conclusion that the findings recorded by the trial Court are manifestly perverse or apparently erroneous, cannot interfere with such findings.

Here, the trial Court and the appellate Court recorded specific finding based on oral evidence of P.Ws.1 to 10 and documentary evidence Exs.P.1 to P.21 that the petitioner contravened Rules 11 to 13 of Registration of Foreigners Rules, 1992 by his failure to intimate the authorities concerned. Therefore, such fact finding is based on material evidence and not manifestly perverse or apparently erroneous warranting interference of this Court by exercising power under Section 401 of Cr.P.C.

Admittedly, the petitioner is a foreigner, who contravened Rules 11 to 13 of Registration of Foreigners Rules, 1992. Section 5 of the Registration of Foreigners Act, 1939 prescribed penalties and the maximum punishment is one year imprisonment or with fine, which may extend to Rs.1,000/- or with both. But the trial Court instead of imposing sentence of imprisonment, imposed only fine of Rs.1,000/-, it is inconsonance with Section 5 of the

² (1986) 3 SCC 445

³ 1974 Cr.L.J. 191 (Gau)

Registration of Foreigners Act, 1939. Therefore, the trial Court and appellate Court did exercise its power in imposing sentence and in the absence of any material to establish irregularity in the order of trial Court and the appellate Court; this Court cannot exercise power under Section 401 of Cr.P.C. Therefore, in the absence of any such material to establish the illegality or irregularity allegedly committed by both the Courts, this Court cannot interfere with the concurrent findings recorded by both the Courts. Consequently, the revision is liable to be dismissed as it is devoid of merits.

In the result, the revision is dismissed.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

01.08.2017

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