

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.R.C. NO.1327 OF 2005

ORDER:

This revision is filed under Section Sections 397 and 401 of Cr.P.C. questioning the propriety, legality and correctness of the judgment dt.27.07.2004 in C.C.No.521 of 2004 passed by the VIII Metropolitan Magistrate, Visakhapatnam finding the accused not guilty of the offences punishable under Sections 324, 448 and 506 r/w 34 IPC.

2. The petitioner is the de facto complainant who is the victim sustained injuries in the alleged incident that took place on 02.11.2000 between 7.30 a.m. to 8 p.m. when A-1 to A-5 went to the disputed site of the petitioner, picked up quarrel with him, and the accused abused the petitioner in filthy language and threatened to kill while demanding to hand over the stay order alleged to have been obtained by the petitioner from the court for the high school playground. On seeing the incident, the son of PW-1 viz. Bonthu Nagesh intervened, brought her mother inside the house and on the same day i.e. on 2.11.2000 night at about 9.30 p.m. while PW-1 was staying alone in her room, A-1 to A-5 armed with beer bottles, trespassed into the office room by opening main gate, A-1 broke one of the beer bottles and attempted to stab PW-1 with broken bottle piece, when warded off the blow, she sustained bleeding injury on her right hand, the accused also tore the saree and tried to make her drink the beer and abused her in vulgar language with an intention to insult her modesty. The incident was reported to the police and the same was registered as case in Crime No.99 of 2000 for the offences punishable under Sections 324, 448 and 506 r/w 34 IPC, issued F.I.R. Ex.P-3 and thereafter, the injured was referred to the hospital and the doctor PW-3

who examined PW-1 issued wound certificate Ex.P-2. During investigation, scene of offence was observed, rough sketch was prepared. Exs:P-4 and P-5 are the rough sketch and observation report respectively. After completion of investigation, police filed charge sheet.

3. The trial Court after following necessary procedure, framed charges against the accused for the offences punishable under Sections 324, 448 and 324 r/w 34 IPC, read over and explained to them, they pleaded not guilty and claimed to be tried.

4. During the trial, on behalf of the prosecution PWs.1 to 4 were examined and marked Exs.P-1 to P-5 and on behalf of the accused, no witnesses were examined but marked Exs.D-1 and D-2 besides marking M.O.1.

5. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C. explained the incriminating circumstances that appeared in the evidence of prosecution witnesses, they denied the same and reported no defence.

6. Challenging the acquittal of the accused, the present revision is filed on the sole ground that the court below erroneously discarded the evidence of PW-2 and wound certificate marked as Ex.P-2 on the minor discrepancy that occurred on account of the investigating officer and discarding such medical evidence is illegal and prayed to set aside the acquittal of the accused recorded by the trial court and requested this court to impose sentence appropriately.

7. During hearing, learned counsel for the petitioner Sri G. Rama Gopal reiterated the grounds urged before the court and would draw the attention of this court to certain observations recorded by the trial Court in para 8 of the judgment of the trial court regarding time pointing out the inconsequential discrepancies and prayed to pass appropriate order.

8. The learned counsel for the respondents 1 to 4 herein supported the impugned calendar and judgment passed by the trial court acquitting the accused.

9. Aggrieved by the acquittal, the present revision is filed by the de facto complainant under Section 397 and 401 Cr.P.C. The present revision is filed under Section 397 and 401 Cr.P.C. under which the jurisdiction of this court is limited.

10. [Section 397](#) of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

11. The well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may

be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories afore-stated.

12. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of Apex Court under [Article 136](#) of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

13. Section 401 confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or apparent harshness of treatment which has on one hand resulted in some injury to the due maintenance of law and order or on the other hand, in some undeserved hardship to individuals. The revisional power conferred on the High Court by this section is discretionary power, has to be exercised in the aid of justice and this Court will not exercise jurisdiction under this Section if there has been no failure of justice even though the proceedings of the lower court suffer from irregularity or impropriety as held by Apex Court in *STATE OF WEST BENGAL v. TULSIDAS*¹. The revisional jurisdiction conferred upon this Court by Section 401 Cr.P.C. has to be exercised only for the purpose of relieving persons who have not had a fair trial or whose convictions have been arrived at by non-observance of material provisions of the law or by such mis-directions as must have occasioned a failure of justice as held in

¹ (1964) 1 Cr.L.J. 443 (SC)

PRAHLAD v. EMPORER². Further, the High Court can, in exercise of its revisional powers, either suo motu on the basis of its own knowledge derived from any source whatsoever, or on an application by a complainant, exercise the powers of an appellate Court both with respect to acquittal and conviction. This revisional power is subject to the following three limitations:

Firstly, no order can be made to the prejudice of the accused or other person unless he had an opportunity of being heard personally or by a pleader in his own defence;

Secondly, it cannot convert a finding of acquittal into one of conviction;

Thirdly, no revision can be entertained at the instance of a party who could have appealed under the Code and has not appealed.

14. The jurisdiction of the Court under [Section 397](#) can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under [Section 397](#) is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under [Section 397](#) but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.

15. Thus, the powers of the High Court are limited, this Court cannot interfere with the concurrent fact findings recorded by the courts below.

² 48, CrLJ 173, 174 (Pat)

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 questions of fact and do justice, though the power should be rarely exercised, as held by Apex Court in *S.P.S. JAYAM & CO. v. NEHRUSADAN*³.

16. 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 in view of the law declared by the Apex Court in *BANSILAL v. LAXMAN*⁴.

17. In the absence of any perversity in appreciation of evidence or patent error, this Court cannot interfere with the findings of the trial Court. On the other hand, in view of Sub Section 3 of Section 401 Cr.P.C, this Court while exercising power under Section 397 and 401 Cr.P.C. cannot convert a finding of acquittal into one of conviction, as held by the Apex Court in *Logendranathjha v. Shri Polailala*⁵

18. At the same time, the High Court must see that it does not convert a finding of acquittal into that of conviction by ordering retrial, as held in *Chinnaswamy v. State of AP*⁶.

19. Keeping in view the scope of revision under Sections 397 and 401 Cr.P.C., I would like to advert to the real controversy between the parties. PW-1 is the victim who testified about lodging of complaint etc. including her reference to PW-3-Dr.M.Krishna Kumar and sustaining injuries in the hands of accused, the respondents herein. But, the only reason recorded by the court below to disbelieve the evidence of PW-3 and Ex.P-2 is the discrepancy in time noted both in the wound certificate and F.I.R.

³ 1977 Cr.L.J. 1101

⁴ (1986) 3 SCC 445

⁵ 1951 SC 316

⁶ 1962 SC 1788.

20. As seen from the evidence recorded by the court below, the F.I.R. was issued at 1230 a.m. but whereas PW-3 examined PW-1 at 12 a.m. This discrepancy is a matter of serious consequence for the reason the hospital is at a distance of 15 kms from the police station and the question of reaching the hospital within short span does not arise even by car also. It is not their case that they were sent to the hospital for medical examination in car or any conveyance. Apart from that the question of examination of PW-1 by PW-2 at 12 a.m. on reference by SH.O. when crime was registered at 1230 a.m. is highly improbable to the natural circumstances, more particularly when the hospital is 15 kms away from the police station. The trial court recorded its specific reason as to how the trial court disbelieved while highlighting the discrepancy in the time mentioned both in Ex.P-2 and in the evidence of PWs.3 and 4.

21. Here, there is any amount of justification in accepting the discrepancy by the trial court and therefore, this court while exercising power under Sections 397 and 401 Cr.P.C. cannot set aside such fact finding to convert acquittal into conviction in view of the limited powers conferred on this Court and the bar contained in Sub Section 3 of Section 401 Cr.P.C. Therefore, I am not inclined to interfere with the fact finding recorded by the trial Court as I find no manifest perversity or apparent error in appreciation of evidence by the Courts while recording fact findings and that apart, the bar under Sub Section 3 of Section 401 Cr.P.C. does not permit this Court to convert the finding of acquittal into conviction, by applying the principles laid down by the Apex Court referred to supra. At best, this court may order retrial without disturbing the evidence recorded by the trial court in extreme circumstances. But, I find no such extreme circumstance to order retrial of case remitting the matter to the court below. Since the discrepancy pointed out by the trial court is serious which lead the court below to disbelieve the very

examination of PW-1 by PW-3 and issue of Ex.P-2 which is the basis to record conviction for the offence punishable under Section 324 I.P.C. When the evidence of doctor PW-3 and Ex.P-2 medical certificate are discarded, there is absolutely no evidence and thereby the findings recorded by the trial Court do not call for interference by this court in this revision.

22. In view of my foregoing discussion, I find no merit in the revision and revision case deserves to be dismissed as it is devoid of merits.

23. In the result, the criminal revision case is dismissed.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

DATE: 31-08-2017
ccm

M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRLRC. NO.1327 OF 2005

Date:31.08.2017

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