

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL REVISION CASE No.1171 of 2009

ORDER:

The present Criminal Revision Case is preferred by the *de facto* complainant aggrieved by the order of acquittal recorded by the learned II Additional Munsif Magistrate, Tenali by judgment dated 19.06.2008 in C.C.No.287 of 2006 under Section 248 (1) of Cr.P.C. for the charges under Sections 341 and 427 r/w 34 IPC.

On 15.07.2009 the delay in preferring the present Revision Case was condoned in CrI.R.C.M.P.No.655 of 2009. On 17.07.2009 notices were ordered to be issued to respondent Nos.2 to 19. Later, the matter was listed on 15.11.2017. On 15.11.2017 there was no representation and, therefore, the Registry was directed to list the matter on 22.11.2017 under the caption 'for orders'. Even on that day there was no representation both in the morning session and in the afternoon session and, therefore, it was listed to this day. Even today there is no representation.

The only point that arises for consideration is whether there has been proper appreciation of evidence on record and whether there is any legal infirmity in the findings recorded by the learned Magistrate.

The case of the prosecution is that the *de facto* complainant took an extent of Ac.5.06 cents of land on lease from the Gram Panchayat, Kamathavaripalem, which is a fish tank called Vishnubotlagari Cheruvu, and grown-up fish as per the norms and

rules of the Panchayat and he used to maintain the stamp papers of the church, pass books and the accounts of the Society. A1 to A18 belong to the very same village. The allegation against the *de facto* complainant is that he was improperly maintaining the accounts of the Society without revealing or showing the accounts to them and there was a quarrel between them earlier. According to the *de facto* complainant, keeping in view, the quarrel between them, on 11.03.2006, at about 12.00 p.m., while he was catching fish from the tank with the assistance of P.Ws.2 to 5 and loading the same in the tractor, all the accused-A1 to A18, with an intention to cause loss to him, picked up quarrel with him demanding to hand over the pass books and documents of the Society then itself and restrained him and abused him in filthy language. Thus, the accused caused a loss of Rs.40,000/- as six quintals of fish died. On the complaint of the *de facto* complainant the Station House Officer, Kollipara registered a case in Cr.No.54 of 2006 under Sections 341, 427 r/w 34 IPC.

After the usual formalities of supplying copies of documents and after framing charges was over, the examination of the accused was resorted to. Since the accused persons pleaded not guilty, the prosecution proceeded with trial by examining P.Ws.1 to 4 and marking Exs.P1 to P4. No oral or documentary evidence was adduced on behalf of the accused.

In order to bring home the guilt of the accused, the learned Magistrate has thoroughly scanned the evidence of P.W.1, the

contents of Exs.P1 and P2 and also the evidence of other witnesses and finally on two main grounds recorded acquittal.

The first ground is that there has been inordinate delay in lodging the F.I.R. The details which the learned Magistrate referred to are that the *de facto* complainant gave report on 21.05.2006 and the same was registered on 25.01.2006 but the incident said to have occurred on 11.03.2006 i.e. two months eleven days after the complaint was lodged. Keeping in view that there has been dispute between the parties and since the delay was not explained, the learned Magistrate viewed the entire case of the prosecution with suspicion.

The second ground is that neither the evidence of P.W.1 nor the contents of Ex.P1 would speak about the participation of A7 to A18. P.W.1 only referred to A1 to A6. Even in Ex.P1 also he referred to A1 to A6 but not the other accused. Basing on these two infirmities, the learned Magistrate arrived at the conclusion that the prosecution failed to prove the charges beyond all reasonable doubt.

The learned Magistrate, in fact, expressed that P.W.1 did not sustain any injury at all and according to him the evidence of P.W.1, who marked Ex.P2-receipt, is of no use. When the inordinate delay, which stood unexplained of about two months eleven days is occurring, certainly, it cannot be ruled out that after due deliberations and consultations all the accused have been roped, more particularly, when the names of A7 to A18 are not at all mentioned in the complaint nor in the statement of P.W.1 before the Court specifically. Certainly, the *de facto* complainant is not supposed to depose vaguely,

more particularly, when the accused are all residents of the very same village and when he is also projecting on the motive referred to above.

Thus, holding that there is no merit, the present Criminal Revision Case is dismissed confirming the order of acquittal recorded by the learned Magistrate.

Miscellaneous applications, if any pending in the Revision Case stand closed.

A.SHANKAR NARAYANA,J

23rd November, 2017
Tsy

