

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2576 of 2017

ORDER:

This criminal revision case is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), questioning the conviction and sentence passed by the Judicial Magistrate of First Class, Jangareddigudem, in C.C.No.516 of 2013, vide order, dated 14.03.2016, finding the petitioners/accused Nos.1 to 3 guilty for the offences punishable under Sections 447 and 324 read with 34 IPC and sentenced them to undergo rigorous imprisonment for six months each and also to pay a fine of Rs.3,000/- each, in default to suffer simple imprisonment for three months each for the offence under Section 324 read with 34 IPC and further sentenced to undergo rigorous imprisonment for three months each for the offence under Section 447 IPC while ordering both the substantive sentences shall run concurrently.

2. Aggrieved by the conviction and sentence passed by the trial Court under the impugned calendar and judgment in C.C.No.516 of 2013, the petitioners preferred Criminal Appeal No.112 of 2016 on the file of the XI Additional Sessions Judge, West Godavari District at Kovvur. The Sessions Court by its calendar and judgment, dated 11.09.2017, confirmed the conviction and sentence passed by the trial Court. Thus, both the trial Court and appellate Court recorded concurrent fact findings regarding the complicity of the petitioners.

3. The case of the prosecution in brief is that on 26.03.2013 at 12.30 p.m. when PWs.1 and 2 were present at their fields, the petitioners

criminally trespassed into their land, picked up quarrel with PWs.1 and 2, beat them with sticks and caused injuries due to previous disputes and they were admitted in Government Hospital, Jangareddigudem for treatment. On 26.03.2013 at 2.15 p.m., on the strength of hospital intimation and statement of PW.1, PW.4 registered a case in Crime No.82 of 2013 for the offences under Sections 447, 324 and 384 read with 34 IPC and issued F.I.R. After completion of investigation, police filed charge sheet against the petitioners for the offences punishable under Sections 447, 384 and 324 read with 34 IPC and the same was taken on file against the petitioners.

4. After securing the presence of the petitioners and upon hearing the Assistant Public Prosecutor and defence counsel, framed charges under Sections 447, 384 and 324 read with 34 IPC, read over and explained to them in Telugu and they pleaded not guilty and claimed to be tried. During trial, PWs.1 to 4 were examined and Exs.P.1 to P.6 were marked on behalf of the prosecution. After closure of the prosecution evidence, the petitioners/accused Nos.1 to 3 were examined under Section 313 Cr.P.C. for the incriminating material appearing against them in the evidence of prosecution witnesses, for which, they denied and reported no defence.

5. Upon hearing arguments of Assistant Public Prosecutor and the defence counsel, the trial Court found guilty for the offences punishable under Sections 447 and 324 read with 34 IPC and convicted and sentenced as stated supra.

6. Aggrieved by the conviction and sentence, the petitioners herein preferred appeal before the Sessions Court, which ended in confirmation. The present revision is filed aggrieved by the concurrent fact findings

recorded by both the trial Court and appellate Court on various grounds. But, during hearing, learned counsel for the petitioners, requested this Court that the sentence imposed against the petitioners is excessive and requested this Court to convert the substantive sentence of imprisonment into fine. Whereas, the Public Prosecutor did not agree for the same and contended that the sentence imposed must commensurate to the gravity of the offence and the Court is not accepted to pass any sentence less than the statutory minimum and prayed for dismissal of the revision.

7. The jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is limited and Court interferes unless the concurrent fact findings of both the Courts below are manifestly perverse or patently erroneous. Section 401 Cr.P.C 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 the other 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

¹ (1964) 1 Cr.L.J.443 (SC)

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 *Prahlad v. Emporer*². 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.

8. Thus, the powers of the High Court are limited, this Court cannot interfere with the concurrent fact findings recorded by the Courts below. 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 the Apex Court in *S.P.S.Jayam and Company V. Nehrusadan*³.

² 48, CrI.L.J.173,174(pat)

³ 1977 SC 1621

9. Normally, this Court will not interfere with the concurrent fact findings recorded by both the Courts unless the fact finding is manifestly perverse or patently erroneous in view of the law declared by the Apex Court in **Bansilal v. Laxman**⁴.

10. Apart from general grounds, the contention raised before this Court is that the petitioners obtained an interim injunction in I.A.No.636 of 2014 in O.S.No.328 of 2014 from the Principal Senior Civil Judge, Kovvur, which was ordered by the date of alleged offence thereby the alleged criminal trespass is false. Curiously, the said order was not marked before the trial Court and appellate Court by filing additional evidence. Therefore, non consideration of the document i.e., interim injunction order passed by the Principal Senior Civil Judge, Kovvur, in I.A.No.636 of 2014 in O.S.No.328 of 2014 is inconsequential. However, there is credible evidence on record to conclude that these petitioners trespassed into the land of PWs.1 and 2 *prima facie* and caused injuries on the body of PWs.1 and 2. Hence, I find no ground to interfere with the conviction recorded by the trial Court and confirmed by the appellate Court.

11. The counsel for the petitioners mainly contended that the sentence of imprisonment is excessive and requested this Court to convert the same into fine, since, there is no statutory minimum. Section 447 IPC deals with punishment for criminal trespass. The sentence prescribed under Section 447 IPC is with imprisonment of either description for a term which may extend to three months, with fine or which may extend to five hundred rupees, or with both. Similarly, for the offence under Section 324 IPC is

⁴ (1986) 3 SCC 445

with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

12. The injuries allegedly caused on the body of PWs.1 and 2 are on the right and left ears respectively and the wound of certificates are marked as Exs.P.3 and P.2 respectively, the injuries are simple in nature as certified by PW.3-Dr.K.Satyanarayana. Taking into consideration of the facts and circumstances of the case and the alleged weapon used in connection of the crime and the interim injunction obtained by the petitioners in I.A.No.636 of 2014 in O.S.No.328 of 2014 from the Principal Senior Civil Judge, Kovvur, the substantive sentence of imprisonment is converted into fine, which was already paid at the time of filing of the appeal before the Sessions Court.

13. In the result, the criminal revision case is allowed in part converting sentence of imprisonment into fine of Rs.3,000/- to each petitioner under each count. The petitioners are set at liberty forthwith, in case, they are not required in any other case.

14. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

20th October 2017.

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