

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.912 of 2005

ORDER:

This revision case is preferred under Sections 397 and 401 of Code of Criminal Procedure (for short "Cr.P.C.") questioning the legality, propriety and regularity of the order dated 24.09.2004 passed in C.C.No.501 of 2001 by the Special Judicial Magistrate of I Class for PCR Cases, Warangal, whereby the accused was acquitted for the offences punishable under Section 506, 509, 504 and 352 of Indian Penal Code (for short "I.P.C.").

The petitioner herein is the defacto complainant – P.W.1, who lodged a complaint with the police alleging that she is working as Teacher in Sri Venkateswara School for Deaf (Semi Government) situated at Pragathinagar, Kazipet and the accused is the Principal of the same. Through memo in C.No.D4/13222/DEO/99 dated 24.06.2000 the Executive Officer, Tirumala Tirupathi Devasthanam, Tirupathi transferred P.W.1 to Venkateshwara School for deaf, Tirupathi and orders were received by the accused on 01.07.2000. Immediately the accused relieved P.W.1 on the same day i.e. 01.07.2000 though P.W.1 requested him not to relieve her since she is having two kids and her husband is working at Hyderabad. In this regard, P.W.1 had a talk to Devasthanam Executive Officer, Tirupathi over phone and requested to cancel her transfer and she also informed to D.E.O that she

was forcibly and intentionally relieved by the accused and the D.E.O. told P.W.1 to convey the accused to talk to him over phone.

On 03.07.2000 P.W.1 and her husband P.W.2 and P.W.4 teacher of the same school went to the accused to convey the same and informed the same to the accused. Then the accused grew wild, abused P.W.1 saying as "Bari Teginchinavu", stupid and also told that he did not want to talk to D.E.O. and he would beat P.W.1 and also abused P.W.1 and insulted her and forcibly sent P.Ws.1, 2 and 4 from school. On 04.07.2000 P.W.1 went to Tirupathi and informed to D.E.O and E.O. and explained the facts and requested to cancel her transfer orders. Considering her request D.E.O. Tirupathi Devasthanam cancelled the transfer orders of P.W.1 but through memo dated 06.07.2000 and posted her again at her old school, Kazipet. Accordingly, on 10.07.2000 P.W.1 went to school and handed over orders of cancellation of her transfer to the accused and requested him to permit her to report to duty. But the accused grew wild and did not permit her to report to duty and made an endorsement on the said orders stating that the conduct and character of P.W.1 are not good etc. and asked her to go out of school. Then P.W.1 had a conversation over phone with D.E.O. Tirupathi Devasthanam and explained the facts. Later the D.E.O. directed the accused to permit P.W.1 to report to duty and when P.W.1 approached the accused on 11.07.2000, he permitted her to report to duty.

The children of P.W.1 are studying in Saint Thomas School situated near to the school of P.W.1 and the children of the accused are also studying in the same school. On 27.07.2000 during her leisure period at about 12.10 noon P.W.1 went to her children and brought them to school. At the same time, the accused also went to the said school for his children. Later, after some time the accused came to the school and asked P.W.1 as to why she left the school without his permission and brought her children. In turn P.W.1 replied to the accused that the accused was not in the school and therefore, she could not obtain permission to leave the school and further during her leisure period, she left the school for her children. Then the accused grew wild and abused P.W.1. Later P.W.1 went to staff room and was narrating the incident to her colleague. The accused heard the same and within no time he entered into staff room and abused P.W.1 saying “Emiti Lanja, matladu tunnavu” and raised his hand against P.W.1 to beat her and also threatened her with dire consequences to kill her or to send her to jail and also told that if P.W.1 wanted to report the matter to anybody she can inform to whom-so-ever she wanted. Noticing the behaviour of accused against P.W.1; she approached P.Ws.3 to 5 who are Grade-I Telugu Pandit in Kanchanapally school and Head Master of Pattipaka High School respectively and who are UTF Secretary etc. and reported the matter to them and in turn on 28.07.2000 P.Ws.3 and 5 went to the school and enquired with

the accused. When they had talk to the accused, the accused told them saying that P.W.1 was “Lanja” and that she was also not having respect and moving with others. Hearing the words of accused, P.Ws.3 and 5 admonished him and left the school.

On 31.07.2000 P.W.1 along with P.Ws.2 and 6 who is a teacher in Markazi School, Hanamkonda went to the school and P.W.6 requested the accused not to harass or insult P.W.1. But the accused in angry mood replied that P.W.1 was “lanje” and she was not having respect and freely moving with others. P.W.6 warned the accused and left the school.

On 31.07.2000 at about 21.15 hours P.W.1 lodged report with the police. Basing on the said report, police arrested the accused on 08.08.2000 and sent him for judicial remand. After completion of investigation, police filed charge sheet and the case was taken on file for the offences punishable under Sections 506, 509, 504 and 352 of I.P.C.

Upon securing the presence of the accused, the trial Court on compliance of Section 207 of Cr.P.C. framed charges against accused for the offence punishable under sections referred above, read over and explained to him in Telugu, the accused pleaded not guilty and claimed to be tried.

During trial, P.Ws.1 to 7 were examined and marked Exs.P.1 to P.3.

After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. explaining

incriminating material available against him, but he denied the same and D.W.1 was examined on behalf of the accused.

Upon hearing argument of both counsel, the trial Court found the accused not guilty for the offences punishable under Sections 506, 509, 504 and 352 of I.P.C. and acquitted him.

Aggrieved by the acquittal of the accused, the present revision is filed on various grounds mainly contending that the petitioner is entitled to claim protection from sexual harassment and abuse at work place as held by the Apex Court in “**Vishaka v. State of Rajasthan**”¹, but the trial Court did not consider the evidence in proper perspective and erroneously acquitted the accused and requested this Court to reappraise the evidence and convict the accused for the offences punishable under Sections 506, 509, 504 and 352 of I.P.C.

When the matter reached, learned counsel for the petitioner did not appear and advance arguments, but this Court cannot dismiss the revision for default, however this Court can decide the revision on merits in view of the law declared in “**Nisha Sharma and others v. Vinod Kumar Sharma**”² wherein it is made clear that the revision cannot be dismissed for default and even the petitioner or his/her advocate did not appear before the Court, the Court shall examine the record and decide the revision on merits.

¹ 1997 (2) ALT (Crl.) 579 (SC)

² 1990 Cri.L.J. NOC 57 (Delhi)

Persuaded by the law declared by the Delhi High Court, I would like to decide this revision, perusing the record.

As seen from the material on record and contents of charge sheet, there was bitter enmity between the petitioner and respondent and such enmity may be a cause for making serious allegation against P.W.1 and insult her or to lodge a complaint against the accused falsely by the petitioner, therefore, the motive is relevant under Section 8 of Evidence Act, but it is not a substantive piece of evidence.

Before the trial Court, P.Ws.1 to 7 were examined, but the Magistrate on appreciation of evidence concluded that the petitioner lodged the complaint falsely, and despite resistance offered by the petitioner, the accused relieved her on her transfer, but she wanted to continue there itself after her transfer to another place; the accused did not permit her, but she could manage the department and obtained an order after relieving from the post of teacher at Kazipet.

Naturally, when there was such enmity between the petitioner and respondent, there is a possibility of exchange of heat words, but whether such words would amount to commission of offence is a question of fact to be decided.

The trial Court disbelieved the entire evidence on record and acquitted the accused.

This revision is filed under Section 397 and 401 of Cr.P.C. 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**”³. 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 “**Prahlad v. Emporer**”⁴.

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:

³ (1964) 1 Cr.L.J. 443 (SC)

⁴ 48, Cr.L.J 173, 174 (Pat)

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.

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 Apex Court in “**S.P.S. Jayam & CO. v. Nehrusadan**”⁵.

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**”⁶.

⁵ 1977 CrL.L.J. 1101

⁶ (1986) 3 SCC 445

Therefore, when the trial Court recorded a specific finding and it is based on oral and documentary evidence, this Court cannot interfere with the same as I find no manifest perversity or apparent error in the fact findings recorded by the trial Court. Therefore, I find no ground to convert the acquittal into conviction and I find no extraordinary circumstance to order retrial of the case by exercising power under Sections 397 and 401 of Cr.P.C.

Hence, the revision is devoid of any merits. Consequently, the revision case is liable to be dismissed.

In the result, the criminal revision case is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

07.09.2017
Ksp