

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1704 of 2005

JUDGMENT:

This revision 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 21.07.2005 passed in CrI.A.No.171 of 2004 by the Principal Sessions Judge, Nalgonda, wherein the conviction and sentence imposed by Additional Judicial Magistrate of First Class, Bhongir in S.T.C.No.6 of 2003 was set aside.

Petitioner herein is the complainant. Petitioner/complainant lodged a complaint with the Sub-Inspector of Police against the respondent No.2 herein alleging that on 05.12.2002 in the evening hours at Padmashali Society, Bhongir, accused came and abused him in filthy language and beat him with hands due to land disputes and also caused disturbance to the public peace and tranquillity.

On appearance of the accused, the trial Court took the case on file for the offences punishable under Sections 290 and 323 of Indian Penal Code (for short "I.P.C.") and he was examined under Section 251 of Cr.P.C., but he pleaded not guilty and claimed to be tried. On behalf of the complainant, P.Ws.1 to 3 were examined and Exs.P.1 and 2 and Ex.C.1 were marked.

After closure of the prosecution evidence, the accused was examined under Section 313 of Cr.P.C. explaining the incriminating material available against him, but he denied the same and reported no defence.

Upon hearing the arguments of both sides, the trial Court found the accused guilty for the offence punishable under Sections 290 and

323 of I.P.C. and convicted and sentenced him to pay fine of Rs.400/- (each offence Rs.200/-) in default, to undergo simple imprisonment for a period of one month.

Aggrieved by the said conviction and sentence passed by the trial Court, the accused preferred an appeal No.171 of 2004 before the Sessions Court, and the Appellate Court having found the accused not guilty, acquitted the accused, setting aside the conviction and sentence imposed against him by the trial Court, assigning its own reasons.

Aggrieved by the Judgment in Criminal Appeal No.171 of 2004, the present Revision is filed by the complainant, mainly contending that the appellate Court did not appreciate the evidence in proper perspective and committed manifest error warranting interference of this Court. He further contended that PW.1 is the victim and the evidence of PW.1 is corroborated by the evidence of PW.2, who is an eye witness to the incident, but the appellate Court brushed aside the evidence of Pws. 1 and 2 without recording any reason and the findings recorded by the Appellate Court are erroneous and prayed to set aside the same.

The jurisdiction of this Court under Section 397 and 401 Cr.P.C. is Limited. 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 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.

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

¹ (1964) 1 Cr.L.J.443 (SC)

² 48, Cr.L.J.173,174(pat)

exercised as held by the Apex Court in *S.P.S.Jayam and Company V. Nehrusadan*³.

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.

Keeping in view the limited jurisdiction of this Court, I would like to advert to the facts of the case and the finding recorded by the trial Court and Appellate Court.

Pw.1 is the victim and Pw.2 is the eyewitness to the incident. According to Pw.1, on 5.12.2002 in the evening hours when he was in office of Weavers Society at Bhongir along with others, the accused/respondent came there and abused him in filthy language and when he questioned, the accused caught hold of his shirt collar and fisted blows on his body. Thereupon, he reported the matter to police by submitting a written complaint vide Ex.P.1.

PW.2 is the alleged eye witness, who spoke about his presence at the time of occurrence. Therefore, basing on the evidence of Pws. 1 and 2 coupled with Exs. P.1 and 2, the Complaint and FIR, the trial Court believed the evidence of the prosecution and convicted the accused, but whereas the Appellate Court reversed the finding of the trial Court on the ground that PW.1 was not referred to hospital for treatment though he is allegedly received fist blows, and failure to send Pw.1 to the hospital would through any amount of doubt whether Pw.1 had received injuries on his body. Therefore, in the absence of any proof with regard to sustaining of injury by PW.1, the Appellate

³ 1977 SC 1621

⁴ (1986) 3 SCC 445

Court disbelieved the incident, which attracted the offence punishable under Section 323 IPC, as the evidence of Pw.2 is interested and thus it disbelieved his evidence.

Section 319 of IPC defined the word 'Hurt'. It means whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. But, as per the evidence of PW.1, he did not complain any bodily pain or injury on account of the alleged first blows. PW.1 was not admittedly referred to the hospital to certify the injuries he sustained in the hands of respondent No.2/accused. To attract an offence punishable under Section 323 IPC, the prosecution has to prove that the respondent caused injury voluntarily. But here, the prosecution failed to establish causing hurt, as defined under Section 319 IPC. Therefore, the acquittal of the accused for the offence punishable under Section 323 IPC is in accordance with law.

The other offences allegedly committed by the accused is punishable under Section 290 IPC. Section 290 IPC deals with punishment for public nuisance. Though the word nuisance is not defined, a reference is made in under Section 144 of Cr.P.C., which confers power on the Executive Magistrate to pass speedy orders or directions to prevent or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray. But the present act of abusing the petitioner alleged in filthy language would not fall under the ambit of Section 144 Cr.P.C. But here, the contention of the prosecution from the beginning was that the accused abused the complainant in filthy language, but that does not fall within the ambit of Section 290 IPC. Therefore, acquittal of the respondent No.2 for the offence punishable under Section 290 IPC is in accordance with law and therefore, the findings of the

Appellate Court are hereby confirmed as I find no ground to interfere with the judgment of the Appellate Court, while exercising power under Section 397 and 401 Cr.P.C.

In view of my foregoing discussion, this Criminal Revision Case is devoid of merits and it is liable to be dismissed.

Accordingly, this Criminal Revision Case is dismissed.

Consequently, miscellaneous applications pending, if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:10.08.2017
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C. No.1704 of 2005
Dt. 10-08-2017

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