

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.359 of 2005

ORDER:

This criminal 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 28.02.2005 passed in CrI.A.No.159 of 2004 by the II Additional Sessions Judge (Fast Track Court), Parvatipuram, whereby the conviction and sentence imposed by the Additional Judicial Magistrate of First Class, Bobbili in C.C.No.582 of 2000 was confirmed.

Petitioners herein are accused Nos.1 and 2. According to the prosecution, on 15.05.1997 at about 03.00 a.m. during the route watch conducted by the Prohibition and Excise Inspector, Bobbili along with staff in the limits of Dibbagudaivalasa village, near Railway level cross gate, at a distance of ½ furlong towards East from the village, the accused were found coming on two bicycles carrying each one polythene bag. On suspicion, the accused were detained, on verification, the Excise officials found that each polythene bag was containing 300 I.D. Arrack sachets and the quantity of each sachet is 100 ml, in total 600 I.D. Arrack sachets. On interrogation, the accused disclosed their identity and stated that they purchased the said I.D.Arrack sachets at Karli Village of Orissa State for re-sale; thereby the Excise officials/staff arrested the accused, seized the property and

collected sample under the cover of an occurrence report drafted at the spot and brought the accused with the seized property to the Excise Station and registered a case in Crime No.365/96-97 of Prohibition and Excise Station, Bobbili. After completion of investigation, police filed charge sheet against the accused.

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 7-A read with 8 (e) of A.P. Prohibition Act, read over and explained to them in Telugu, the accused pleaded not guilty and claimed to be tried.

During trial, P.Ws.1 to 4 were examined and marked Exs.P.1 to P.3 and M.Os.1 and 2.

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

Upon hearing argument of both counsel, the trial Court found the accused guilty for the offence punishable under Section 7-A read with 8 (e) of A.P. Prohibition Act and sentenced to undergo simple imprisonment for a period of one year each and to pay a fine of Rs.10,000/- each in default of payment of fine to undergo simple imprisonment for a further period of three months each.

Aggrieved by the conviction and sentence passed by the trial Court, the petitioners/accused preferred an appeal No.159 of 2004 before the Sessions Court, and the same was dismissed confirming the conviction and sentence passed by the trial Court. Aggrieved by the concurrent findings of both the Courts below, the present revision is preferred on various grounds.

The main ground is regarding appreciation of evidence of prosecution witnesses and recording conviction based on the evidence of prosecution witnesses for the offence punishable under Section 7-A read with 8 (e) of A.P. Prohibition Act by the trial Court is erroneous and contended that the law declared by the Apex Court in “Karamjit Singh v. State (2003 Criminal Law Journal at page 2021)” (on verification no such decision was found at relevant page) is not applicable to the present case and thereby the trial Court committed serious error in convicting the accused based on the said decision and prayed to set aside the conviction and sentence passed by the trial Court.

When the matter reached, learned counsel for the petitioners 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**¹” wherein it is made clear that the revision cannot be

¹ 1990 Cri.L.J. NOC 57 (Delhi)

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.

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

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**”². 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

² (1964) 1 Cr.L.J. 443 (SC)

occasioned a failure of justice as held in “**Prahlad v. Emporer³**”.

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

³ 48, Crl.LJ 173, 174 (Pat)

justice, though the power should be rarely exercised, as held by Apex Court in “**S.P.S. Jayam & CO. v. Nehrusadan**”⁴.

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**”⁵.”

In view of the limited scope of the revision, this court normally would not venture to disturb the concurrent findings of both the Courts below unless those findings are not based on any material or tainted by any perversity or apparently erroneous.

To substantiate the case of the prosecution, the prosecution examined P.W.1 – Prohibition and Excise Sub-Inspector, who testified about the conducting route search in the limits of Dibbagudaivalasa Village and finding the petitioners carrying I.D. Arrack in polythene bags P.W.2 – Prohibition and Excise Constable, P.W.3 – Prohibition and Excise Constable. P.Ws.1 to 3 are official witnesses, but no independent witness was examined to prove the search and seizure of the property from the possession of the accused.

P.Ws.1 to 3 testified about the finding of I.D.Arrack sachets in the possession of accused in contravention of provisions of Prohibition Act and seizure of I.D. Arrack sachets

⁴ 1977 CrL.J. 1101

⁵ (1986) 3 SCC 445

under the cover of Ex.P.1 occurrence report. Ex.P.2, F.I.R. was registered based on Ex.P.1. Therefore, on the basis of unshaken testimony of P.Ws.1 to 3, though they are official witnesses, conviction can be recorded, if their evidence is totally reliable and inspires confidence of the Court.

The main contention urged in the grounds of revision is regarding appreciation of evidence. But this Court while exercising power under Section 397 and 401 of Cr.P.C. cannot reappraise the entire evidence since the scope of criminal revision case is limited to questions of law only. Even otherwise when the route watch being conducted and found the accused are in possession of I.D. Arrack, independent witness cannot be expected as the said route watch was conducted at the outskirts of Dibbagudaivalasa village. Therefore, non-examination of any independent witness to the search and seizure is not fatal to the case of the prosecution when the evidence of official witnesses inspires confidence of this Court. Moreover, there is no rule that the evidence of official witnesses cannot be based to record conviction. The prudence requires independent corroboration; that does not mean that the evidence of official witnesses can be thrown out by disbelieving it. In fact P.Ws.1 to 3 were discharging their duties, more particularly to prevent transportation and sale of I.D.Arrack, in such case their evidence cannot be discarded.

Ex.P.3 is the Chemical Analyst Report and it established that the tests conducted over M.Os.1 and 2 for Iodoform,

acidity and fusel oil are positive and the contraband in question is illicitly distilled liquor. Therefore, prosecution also established that the property seized from the possession of accused is I.D. Arrack and possession of I.D.Arrack is punishable under Section 7-A read with 8 (e) of A.P.Prohibition Act. Therefore, the findings of both the Courts are free from legal infirmity and do not warrant interference of this Court by exercising power under Section 397 and 401 of Cr.P.C. Consequently, I find no ground to interfere with the fact findings to reverse conviction and sentence passed by the trial Court and affirmed by the appellate Court.

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

14.09.2017
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