THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2257 of 2017

ORDER:

This revision case is preferred under Sections 397 and 401 of Code of Criminal Procedure (fort short "Cr.P.C.") questioning the legality, propriety and regularity of the order dated 31.07.2017 passed in Crl.A.No.513 of 2013 by the XIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, whereby the conviction and sentence imposed by VIII Metropolitan Magistrate, Cyberabad at Rajendranagar in C.C.No.619 of 2010 was confirmed.

Accused Nos.1 and 2 in C.C.No.619 of 2010 and appellants in Crl.A.No.513 of 2013 are the revision petitioners herein. Accused No.1 is native of Laxmipur Village of Jagtiyal Mandal, Karimnagar District, who studied up to SSC. He went to Dubai on Visiting Visa and worked as Housemaid up to 2007. In September, 2007 the Dubai Government announced that the illegal immigrants might leave the country without any criminal case. On that in October, 2007 he returned back to India and while leaving the country, the immigration officials stamped "no entry to Dubai" on his passport. While working in Dubai, he met with accused No.2, who was also working there. Accused No.1 decided to go again to Dubai and as there is no possibility to go again to Dubai on his passport, he approached accused No.2 for his passport, as they have similar features. Accused No.2 demanded Rs.10,000/- to sell his passport. In negotiation, accused No.1 paid Rs.8,000/- to accused No.2 and obtained his passport, which is containing residential permit up to 27.03.2011. On 10.02.2009, accused No.1 purchased the ticket from Akbar Travels, Hyderabad and boarded Emirates Flight on 13.02.2009 to go to Dubai. When he landed in Dubai, the immigration officials detained him as he travelled on forged passport, cancelled the residential permit and deported him back to Hyderabad in the same Emirates flight on 14.02.2009. The Sub-Inspector of Police, Admn.Immigration, RGI Airport, Shamshabad lodged a report to that effect, on which a case in Crime No.72 of 2009 under Section 419 and 420 of I.P.C. and Section 12 (1) (a) (b) (d) (e) of Passports Act, 1967 was registered against accused Nos.1 and 2 and issued F.I.R. After completion of investigation, police filed final report under Section 173 of Cr.P.C. Court took cognizance against the petitioners for the offences punishable under Sections 419 and 420 of I.P.C. and under Section 12 (1) (a) (b) (d) (e) of Passports Act.

Upon securing the presence of the accused, the trial Court on compliance of Section 207 of Cr.P.C. framed charges against accused Nos.1 and 2 for the offence punishable under sections 419 and 420 of I.P.C. and under Section 12 (1) (a) (b) (d) (e) of Passports Act, 1967, read over and explained to them in Telugu, to which the accused pleaded not guilty and claimed to be tried.

During trial, P.Ws.1 and 2 were examined and marked Exs.P.1 to P.10.

After closure of the prosecution evidence, the petitioners 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 No.1 guilty for the offence punishable under Section 419 of I.P.C. and under Section 12 (1) (a) and (d) of Passports Act, 1967 and sentenced him to suffer one year rigorous imprisonment for each of the offences and also found accused No.2 guilty for the offence punishable under Section 419 read with 109 of I.P.C. and under Section 12 (a) (b) of Passports Act, 1967 and sentenced him to suffer one year rigorous imprisonment for each of the offences.

Aggrieved by the conviction and sentence passed by the trial Court, the petitioners/accused preferred an appeal No.513 of 2013 before the Sessions Court, and the same was dismissed by the judgment dated 31.07.2017, confirming, the conviction and sentence imposed by the trial Court, which is impugned in this revision.

Though the petitioners raised several contentions questioning the propriety and legality of the judgment of the appellate Court, but curiously during hearing Sri K.Surender, learned counsel for the petitioners, contended that the trial Court and the appellate Court did not consider the right of the petitioners to claim benefit under Section 360 of Cr.P.C. to release them on probation of good conduct or after admonition. In support of his contentions, he placed reliance on the judgments of Apex Court rendered in "***Harivallabha v. State of M.P.***[1]" and "***Chandreshwar Sharma v. State of Bihar***[2]". Basing on the said judgments, learned counsel for the petitioners requested this Court to invoke Section 360 Cr.P.C. in favour of the petitioners. No other contention regarding merits was raised.

Refuting the said contentions, learned Public Prosecutor for Telangana State would contend that the offence committed by the petitioners is a serious crime against security of a State, in such case the petitioners are disentitled to claim benefit under Section 360 of Cr.P.C. and prayed for dismissal of revision. In support of his contentions, he relied on the judgment of Apex Court rendered in "***Sunil Kumar v. State of Haryana***[3]"

Considering rival contentions and perusing material available on record, the point that arises for consideration is as follows:

> ***"Whether the petitioners be released on probation of good conduct or after admonition by invoking Section 360 of Cr.P.C.?"***

[1] (2005) 10 SCC 330
[2] (2000) 9 SCC 245
[3] AIR 2012 SC 1754

P O I N T:

The trial Court and the appellate Court recorded concurrent findings on fact regarding commission of offence and this Court cannot interfere with the concurrent findings recorded by both the Courts below unless those findings are manifestly perverse or apparently erroneous or without any evidence.

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***[4]**"**. 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

[4] (1964) 1 Crl.L.J. 443 (SC)

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***[5]".

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,

[5] 48, Crl.LJ 173, 174 (Pat)

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***[6].

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**[7]."

The offences allegedly committed by the petitioners are punishable under Section 419 read with 109 of I.P.C. and under Section 12 (1) (a) (d) and (e) of Passports Act, 1967.

Maximum punishment prescribed under Section 419 of I.P.C. is imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Maximum punishment prescribed under Section 12 of the Passports Act, 1967 is imprisonment for a term which may extend to two years or with fine which may extend to Rs.5,000/- or with both.

While imposing sentence, on the request made by the counsel for the petitioners/accused that they are labourers and they have their respective families to be looked after and that a lenient view may be taken against them, the Magistrate observed as follows:

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[6] 1977 Crl.L.J. 1101
[7] (1986) 3 SCC 445

"it is true that both the accused, though not admitted that they did job in Dubai and had acquaintance, they intended to go to work as maid servants and earn money, for which purpose they adopted this procedure for accused No.1 to leave the country, though this Court has sympathy towards them as they are poor labourers, in view of the conduct in exchanging the passport and A.1 left the country with the passport of A.2 and became deportee of Dubai, no lenient view can be taken by imposing fine."

Taking advantage of this observation, learned counsel for the petitioners would contend that when the Magistrate observed that the accused are innocent people went to Dubai to work as maidservants there to eek out their livelihood; they can be released by invoking Section 360 of Cr.P.C. by placing reliance on "***Harivallabha v. State of M.P.***" (referred supra)

Section 360 of Cr.P.C. reads thus:

"360. **Order to release on probation of good conduct or after admonition.-** (1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour:

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class forwarding the accused to or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860) punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a ri ght of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law:

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1) shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the tinie being in force for the treatment , training or rehabilitation of youthful offenders."

In "***Harivallabha v. State of M.P.***" (referred supra) the accused were found guilty for the offence punishable under Section 7 of Essential Commodities Act, 1955 and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.10,000/-. On appeal being preferred, the High Court upheld the conviction and sentence of fine, but reduced the sentence of imprisonment from three years to three months. The appellants approached the Supreme Court by way of special leave and the Apex Court directed the trial Court to deal with them under the provisions of Section 360 of Cr.P.C.

In "***Chandreshwar Sharma v. State of Bihar***" (referred supra) the Apex Court held it is mandatory for a Court to give special reasons for non application of Section 360 of Cr.P.C. as contemplated under Section 361 of Cr.P.C.

But in the present case, both in the trial Court or appellate Court, no such plea was raised, but for the first time such contention is urged before this Court.

Learned Public Prosecutor for Telangana State by relying on "***Sunil Kumar v. State of Haryana***" (referred supra) would contend that when the offence committed by the petitioners is serious offence and it was security risk to the State, this Court cannot invoke provisions of Section 360 of Cr.P.C. and requested this Court to confirm the conviction and sentenced awarded by the trial Court and affirmed by the appellate Court.

In "***Harivallabha v. State of M.P.***" (referred supra) the offence committed by the accused therein is not a serious one and it is only under Section 7 of Essential Commodities Act, but in "***Sunil Kumar v. State of Haryana***" (referred supra) though the offence committed by the accused is punishable under Section 7 of Essential Commodities Act, the Apex Court held that petitioner had lost in four courts earlier, filing totally misconceived petition amounted to abuse of process of Court and waste of courts' time, such litigant was not required to be dealt with lightly and relied on "***Dr.Buddhi Kota Subbarao v. K.Parasaran and Ors.***[8]", wherein it was observed as under:

> "No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived or frivolous petitions."

In "***Sunil Kumar v. State of Haryana***" (referred supra) the Apex Court also relied on "***Pyarali K. Tejani v. Mahadeo Ramchandra Dange and Ors.***[9]" wherein it was observed that "the kind application of the probation principle is negatived by the imperatives of social defence and the improbabilities of moral proselytisation. No chances can be taken by society with a man whose anti-social operations, disguised as a respectable trade, imperil numerous innocents. He is a security risk. Secondly, these economic offences committed by white-collar criminals are unlikely to be dissuaded by the gentle probationary process. Neither casual provocation nor motive against particular persons but planned profit-making from numbers of consumers furnishes the incentive - not easily humanised by the therapeutic probationary measure" and declined to exercise power under Section 360 of Cr.P.C.

[8] AIR 1996 SC 2687
[9] AIR 1974 SC 228

If these principles are applied to the present facts of the case, the accused No.1 allegedly entered into Dubai misusing the passport of accused No.2, who is a person with identical features of accused No.1, on payment of Rs.8,000/- to work there and earn money. Playing such fraud on the passport authorities and immigration authorities is a matter of serious concern and sometimes it is high risk crime and it may cause threat to the security of the country. Such offences cannot be viewed lightly and the Court has to deal with those persons sternly and impose appropriate punishment. If appropriate punishment is not imposed, it would be a mockery of justice.

In "***State of Madhya Pradesh v. Santosh Kumar***[10]" the Apex Court held as follows:

> "It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon".

In "***State of Punjab v. Rakesh Kumar***[11]" the Apex Court held as follows:

> "In order to exercise the discretion of reducing the sentence the statutory requirement is that the Court has to record "adequate and special reasons" in the judgment and not fanciful reasons which would permit the Court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no strait- jacket formula can be indicated. What is applicable to trial Courts regarding recording reasons for a departure from minimum sentence is equally applicable to the High Court. The only reason indicated by the High Court is that the accused belonged to rural areas. The same can by no stretch of imagination be

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[10] (2006)6 SCC 1
[11] (2008)12 SCC 33

considered either adequate or special. The requirement in law is cumulative."

Time and again several Courts including the Apex Court laid down certain guidelines for imposing sentence in serious and grave crimes that is known as sentencing policy. The policy of sentencing is to reform such culprits and the Court has to keep in mind both mitigating and aggravating circumstances while imposing sentence. Mitigating circumstances illustratively as follows:

1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

2) The age of the accused is a relevant consideration but not a determinative factor by itself.

3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

5) The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent, harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

Therefore, it is difficult to invoke provisions of Section 360 of Cr.P.C. to release the accused. The trial Court and the appellate Court cannot be blamed for their fault to record reasons since the petitioners did not raise such contention before the Courts below. Hence, the principles laid down in "***Harivallabha v. State of M.P.***" (referred supra) and "***Chandreshwar Sharma v. State of Bihar***" (referred supra) cannot be applied to the facts of the present case to release the petitioners under Section 360 of Cr.P.C. i.e. on probation of good conduct or after admonition, in view of gravity and seriousness of the offence which is eminent threat to the security of the State. In the present facts, the offence committed by the petitioners was not innocently but designedly defrauded various government authorities to gain money. Such persons do not deserve any sympathy; as such none of the mitigating circumstances illustratively stated above would come to the aid of the petitioners.

Hence, I find no ground to interfere with the findings recorded by the trial Court and affirmed by the appellate Court and 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

01.09.2017
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