

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL REVISION CASE No.1646 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 26.09.2005 passed in CrI.A.No.77 of 2002 by the District and Sessions Judge, Chittoor, whereby the conviction and sentence imposed by the IV Additional Junior Civil Judge – cum - Judicial Magistrate of First Class, Chittoor in C.C.No.186 of 2000 was confirmed.

The case of the prosecution, in brief, is that the accident was occurred on 22.05.2000 at 06.30 a.m. on Chittoor – Tirupati road near Gopalpuram village. On the date of occurrence, the defacto complainant namely K.Reddepppa Naidu, deceased Chinnaswamy Naidu, K.Srinivasulu Naidu (P.W.4), Eswar Prasad (P.W.5) and Jayakiran were proceeding towards Rangampet cross road from Chavatapalle village in tractor bearing No.AP 03 T 2390, which was driven by the defacto complainant. While so, the accused being the driver of the crime lorry bearing No.AP 07 T 5699 drove the vehicle at high speed and in rash and negligent manner, hit the tractor with considerable force from its back. As a result of the said accident, Srinivasulu Naidu and Eswar Prasad sustained multiple fatal injuries. One Chinnaswamy Naidu also sustained multiple fatal injuries and died on the spot. Both

injured namely Srinivasulu Naidu and Eswar Prasad were shifted to Government Hospital, Chittoor for treatment. The defacto complainant lodged complaint with the police. Ex.P.1 is the report and on the strength of the same, a case in Crime No.45 of 2000 for the offence punishable under Sections 304 - A, 337 and 279 of I.P.C. was registered and issued F.I.R.

During investigation, S.I of police inspected the scene of offence, prepared rough sketch and observation report, examined the witnesses recorded statements under Section 161 of Cr.P.C. and inquest was held over the dead body of the deceased Chinnaswamy Naidu in the presence of mediators and referred the dead body to the Government Hospital for post-mortem examination and sent requisition to Motor Vehicle Inspector to inspect the lorry, accordingly Motor Vehicle Inspector inspected the lorry and found that the accident was not occurred due to any mechanical defect. After collecting the post-mortem report and wound certificate issued by the doctor, filed charge sheet before the Court.

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 offences punishable under sections 304-A, 337 and 279 of I.P.C. read over and explained to the accused in Telugu, the accused pleaded not guilty and claimed to be tried.

During trial, P.Ws.1 to 8 were examined and marked Exs.P.1 to P.9.

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

Upon hearing argument of both counsel, the trial Court found the accused guilty and sentenced to undergo simple imprisonment for one (1) year and to pay a fine of Rs.500/- in default to undergo simple imprisonment for two (2) months for the offence punishable under Section 304 (A) of I.P.C. and further sentenced to pay a fine of Rs.500/- in default to undergo simple imprisonment for a period of two (2) months for the offence punishable under Section 279 of I.P.C. and sentenced to pay a fine of Rs.500/- in default to undergo simple imprisonment for a period of two (2) months for the offence punishable under Section 337 of I.P.C.

Aggrieved by the conviction and sentence passed by the trial Court, the petitioner/accused preferred an appeal No.77 of 2002 before the Sessions Court, and the same was dismissed, confirming the conviction and sentence recorded by the trial Court, which is impugned in this revision.

When the matter reached, Sri Ch.Janardhan Reddy, learned counsel for the petitioner did not appear and advance argument, 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**”<sup>1</sup> wherein it is made clear that the revision cannot be dismissed for default and even the petitioner or his 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**”<sup>2</sup>. The revisional jurisdiction conferred upon this Court by Section 401 Cr.P.C. has to be exercised only for the purpose of

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<sup>1</sup> 1990 Cri.L.J. NOC 57 (Delhi)

<sup>2</sup> (1964) 1 Cri.L.J. 443 (SC)

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<sup>3</sup>**”.

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

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<sup>3</sup> 48, Crl.LJ 173, 174 (Pat)

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**”<sup>4</sup>.

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**”<sup>5</sup>.

Considering the entire record, it is an undisputed fact that one Chinnaswamy Naidu died due to the accident while proceeding in a Tractor driven by P.W.1, who lodged complaint marked as Ex.P.1. His evidence is consistent with regard to rash and negligent driving of lorry by the petitioner. Similarly, Sri Srinivasulu Naid and Eswara Prasad, who were examined as P.Ws.4 and 5, also consistently deposed about driving of lorry in rash and negligent manner by the petitioner. When the injured witnesses were examined and testified about rash and negligent driving of the petitioner herein, their evidence is to be accepted being injured, who were not prepared to foist a false case against any person and that too it is not the case of the petitioner that a false case is foisted against the petitioner as per cross-examination of P.Ws.1 to 4.

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<sup>4</sup> 1977 CrL.J. 1101

<sup>5</sup> (1986) 3 SCC 445

When injured himself testified about the rashness and negligence of the accused, the same has to be accepted. In **“Brahm Swaroop and another v. State of Uttar Pradesh<sup>6</sup>”** the Apex Court while dealing with conviction based on testimony of injured eye-witnesses and credibility of injured eye-witnesses held that, if evidence of injured eyewitnesses is trustworthy and believed by Court, question of motive to implicate becomes totally irrelevant and merely because witnesses were close relatives to deceased, that could not be ground to discard their evidence and testimony of injured eye witnesses is worthy of credence.

By applying the principle laid down in the above judgment, the evidence of P.Ws.4 and 5 is reliable being the injured witnesses, who sustained injuries, is supported by Exs.P.7 and P.8 wound certificates, which are not in dispute. Occurrence of accident and damage to the lorry is supported by the evidence of P.W.7 – Motor Vehicle Inspector and Ex.P.4 – Motor Vehicle Inspector’s report issued by him.

If really, no accident was occurred, the question of sustaining damage to the lorry does not arise and that itself is suffice to conclude that due to rash and negligent driving of the petitioner herein, the lorry hit the rare side portion of the tractor, which was proceeding ahead to the lorry. When the tractor was proceeding ahead of the lorry, the degree of precaution to be taken by the petitioner herein should be more

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<sup>6</sup> (2011) 6 SCC 288

than normal care and precaution, but the petitioner did not take necessary care and caution required as an ordinary prudent driver and failure to take necessary care and caution while driving lorry would amount to rashness and negligence. Therefore, the evidence of P.W.1, the driver of the tractor, and the evidence of P.Ws.4 and 5, injured witnesses, is sufficient to hold that the accident occurred due to rash and negligent act of the driver of the lorry. Therefore, the trial Court and the appellate Court recorded a concurrent fact finding.

One of the contentions raised in the present revision is that the non-examination of the Doctor is fatal to the case of the prosecution. If any suggestion was put to any witness that the death of Chinnaswamy Naidu was not caused due to the accident, then there is some substance in the contention. When no such suggestion was put to any of the witnesses, non examination of the doctor is not fatal to the case of the prosecution.

Both the trial Court and the appellate Court recorded concurrent fact findings holding that the petitioner is guilty of rashness and negligence and caused death of Chinnaswamy Naidu and injuries to P.Ws.4 and 5. Therefore, such fact findings cannot be interfered with, since it is supported by oral and documentary evidence on record.

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.

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**JUSTICE M. SATYANARAYANA MURTHY**

06.10.2017  
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