

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRLRC. NO.1314 OF 2005

ORDER:

This revision is filed by the petitioner/de facto complainant-Harijana Kulumala Sanjana who was examined as PW-1 in SC ST SC No.15 of 2002 before the Special Judge for trial of SC & ST (POA) Act, Kurnool, under Section Sections 397 and 401 of Cr.P.C. questioning the propriety, legality and correctness of the impugned judgment dt.18.05.2005 in SC ST SC No.15 of 2002.

2. The trial court found the respondents 2 to 5/A-1 to A-4 not guilty for the offence punishable under Section 3(1)(x) of SC & ST (POA) Act (for short 'the Act') and for the offence punishable under Section 506 IPC, while finding A-1 guilty for the offence punishable under Section 324 IPC, A-2 to A-4 guilty for the offence punishable under Section 324 r/w 34 IPC, convicted and sentenced to pay fine with default clause.

3. Dissatisfied with the acquittal of the respondents 2 to 5, the present revision is filed on various grounds. The main contention of the petitioner is that respondents 2 to 5 belongs to scheduled caste (for short 'S.C.'), but the trial court erroneously recorded a finding that they are Christians and Ex.P-8 supports the contention of the petitioner. The trial court on erroneous appreciation of facts, concluded that the petitioner does not belong to SC or ST and committed an error in acquitting the accused for the offences mentioned supra.

4. The main grievance of the petitioner is that the respondents 2 to 5 abused PW-1 (Kalumala Sanjanna) and PW-6 (Harijana Reddaiah) as "Madiga Lanja Kodaka" and threatened them with dire consequences

and beat PW-1. The petitioner belongs to S.C. and whereas, respondents 2 to 5 does not belong to S.C. or S.T. Therefore, the alleged abuse 'Madiga Lanja Kodaka' would fall within Section 3(1)(x) of the Act.

5. The Special Judge framed charges against the respondents 2 to 5 for the offence punishable under Section 3(1)(x) of the Act along with charges under the provisions of Indian Penal Code, read over and explained to them, they pleaded not guilty and claimed to be tried.

6. During trial, the prosecution examined PWs.1 to 11 and marked Exs:P-1 to P-8. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C. explaining the incriminating material that appeared against them in the testimony of PWs.1 to 11, they denied the same and DWs. 1 to 3 were examined and marked Exs:D-1 to D-6 to establish that the petitioner and respondents 2 to 5 does not belong to scheduled caste. Based on the evidence of defence witnesses and Exs.D-1 to D-6, the trial court found the accused not guilty for the offence punishable under Section 3(1)(x) of the Act.

7. Aggrieved by the acquittal, the present revision is filed by the de facto complainant under Section 397 and 401 Cr.P.C. The present revision is filed under Section 397 and 401 Cr.P.C. under which the jurisdiction of this court is limited.

8. [Section 397](#) of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well- founded error and it may not be appropriate for the court to scrutinize the orders, which upon

the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

9. The well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories afore-stated.

10. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of Apex Court under [Article 136](#) of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the

court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

11. 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*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

¹ (1964) 1 Cr.L.J. 443 (SC)

² 48, Cr.L.J 173, 174 (Pat)

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.

12. The jurisdiction of the Court under [Section 397](#) can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under [Section 397](#) is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under [Section 397](#) but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.

13. 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. NEHRUSADAN³.

14. 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. LAXMAN⁴.

15. In the absence of any perversity in appreciation of evidence or patent error, this Court cannot interfere with the findings of the trial Court. On the other hand, in view of Sub Section 3 of Section 401 Cr.P.C., this Court while exercising power under Section 397 and 401 Cr.P.C. cannot convert a finding of acquittal into one of conviction, as held by the Apex Court in *Logendranathjha v. Shri Polailala*⁵

16. At the same time, the High Court must see that it does not convert a finding of acquittal into that of conviction by ordering retrial, as held in *Chinnaswamy v. State of AP*⁶.

17. According to PWs.1 to 3, they belong to Harijan and they placed reliance on Ex.P-8 to substantiate their contention that they belong to scheduled caste and abuse by raising their caste if PWs.1 to 3 belongs to scheduled caste is an offence. Section 3(1)(x) of the Act deals with punishment for insulting a member of scheduled caste intentionally insults or intimidates with intent to humiliate a member of a schedule caste or a scheduled tribe in any place within public view, shall be punished with imprisonment not less than six months but which may extend to five years and with fine.

³ 1977 Cri.L.J. 1101

⁴ (1986) 3 SCC 445

⁵ 1951 SC 316

⁶ 1962 SC 1788.

18. In the present case, the only defence set up by the respondents 2 to 5 before the trial Court was that the petitioner does not belong to scheduled caste and they are members of Christian religion. The petitioner mainly relied on Ex.P-8 to establish that they are not Christians and they are members of scheduled caste. Though PWs.1 to 4 stated that they are members of scheduled caste, the said contention is not substantiated by the prosecution. According to the defence, the petitioner is professing Christianity converting themselves into Christian religion from Hindu religion and produced material before the Court under Exs:D-1 to D-6 and nobody was examined to prove Ex.P-8. On overall consideration of the testimony of DWs.1 to 3 and documentary evidence Exs:D-1 to D-6 clinchingly established that the petitioner and PWs.3 and 4 are converted Christians and the same is supported by documentary evidence Exs:D-1 to D-6 and supported by evidence of DW-3; whereas the prosecution relied on Ex.P-8 letter issued by the Mandal Revenue Officer, Nandavaram. Even to prove Ex.P-8 letter, the M.R.O. Nandavaram was not examined as witness before the trial Court. It is a known fact that a procedure is prescribed for issuance of caste certificates to the members of scheduled castes, scheduled tribes, and backward classes known as Rules for issuance of caste certificates belonging to SC, ST and BC in the State of Andhra Pradesh. There is a procedure to be followed even for issuing certificates certifying their caste. But, based on letter issued by the Mandal Revenue Officer, without proving the disputed document by examining M.R.O., it is difficult to conclude that the petitioner and PWs.2 to 4 belong to scheduled caste. On the other hand, the defence produced before the court established that they are converted Christians, though they originally

belong to scheduled caste and on account of such conversion, they are ceased to be the members of the scheduled caste, thereby the prosecution miserably failed to establish that the petitioner herein and PWs.2 to 4 belong to scheduled caste or scheduled tribe by producing cogent and satisfactory evidence and in such a case, the trial court has no option except to disbelieve the case of the prosecution since the prosecution is under obligation to prove the case independently beyond reasonable doubt. Therefore, the finding of the trial court does not call for interference by this court by exercising power under Section 397 and 401 Cr.P.C.

19. To record conviction against the accused for the offence punishable under Scheduled Castes and Scheduled Tribes (POA) Act, it is bounden duty of the prosecution to prove that the victim belongs either to a member of scheduled caste or scheduled tribe as defined under Section 2 (c) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, shall have the meanings assigned to them respectively under Clause (24) and Clause (25) of Article 366 of the Constitution. But, no specific definition is given, even otherwise, it is for them to prove that they are still continuing as members of scheduled caste though they belong to harijan community which is a scheduled caste. But, on account of conversion, they ceased to be the members of scheduled caste and thereby acquitting the accused for the offence punishable under Section 3(1)(x) of the Act is not illegal.

20. In view of the limited powers conferred on this Court and the bar contained in Sub Section 3 of Section 401 Cr.P.C., I am not inclined to interfere with the fact finding recorded by the trial Court as I find no manifest perversity or apparent error in appreciation of evidence by the

Courts while recording fact findings and that apart, the bar under Sub Section 3 of Section 401 Cr.P.C. does not permit this Court to convert the finding of acquittal into conviction, by applying the principles laid down by the Apex Court referred to supra. Hence, this Criminal Revision Petition deserves to be dismissed as it is devoid of merits.

21. In the result, the criminal revision case is dismissed.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

DATE: 31-08-2017
ccm

M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRLRC. NO.1314 OF 2005

Date:31.08.2017

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