

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.1326 OF 2005

ORDER:

This criminal revision case is filed under Sections 397 & 401 Cr.P.C, questioning the propriety and legality of the order dated 13.05.2005 in CrI.A.No.130 of 2004 passed by the V Additional Sessions Judge, Warangal, reversing the judgment dated in C.C.No.257 of 1999 passed by the Judicial Magistrate of First Class, Mahabubabad.

The petitioner is the complainant who filed private complaint under Section 190(1) & 200 Cr.P.C against the accused for the offences under Sections 447, 504, 524 and 326 I.P.C against A-1 and Sections 447, 504, 524 and 326 I.P.C r/w Section 149 I.P.C against A-2, alleging that the complainant is the elder brother of A-1 and A-2 is the wife of A-1. There are land disputes between the complainant and the accused and the relationship between the complainant and the accused was not cordial. On the date of offence in the early morning at about 06:30 A.M when M. Uppalaiah and Ilaiah (L.Ws.1 & 2) were ploughing the land, suddenly A-2 criminally trespassed into the land of the complainant and started beating the bullocks with sticks in order to drive the ploughs out of the said land. When Uppalaiah and Ilaiah objected for doing so, the accused abused in filthy language and beat them with sticks. Further, A-1 grew wild and abused the complainant in filthy language and beat him with sticks on his left side neck, left shoulder, back of thigh and other parts of body

indiscriminately. As a result, the complainant sustained left cervical spine fracture and sustained grievous injury. The complainant also sustained simple injuries all over his body and fell unconscious. On the information, wife of the complainant and his younger brother took him to the Government Hospital at Mahabubabad for treatment. The complainant lodged complaint with P.S. Kesamudram and the complainant was further referred to M.G.M. Hospital, Warangal.

The complaint was taken on file and after following necessary procedure, charges were framed against the accused for the offences under Sections 447, 504, 524 and 326 I.P.C against A-1 and Sections 447, 504, 524 and 326 I.P.C r/w Section 149 I.P.C against A-2. During trial, P.Ws 1 to 4 were examined, marked Exs.P-1 to P-3. After closure of prosecution case, the accused were examined under Section 313 Cr.P.C and they denied the incriminating evidence and reported defence evidence.

Upon hearing argument of both the counsel, the Trial Court found the accused 1 & 2 guilty for the offences mentioned supra and imposed fine of Rs.500/- for the offences under Section 447 IPC and to suffer simple imprisonment for 15 days and also to pay fine of Rs.2,000/- for the offence punishable under Section 324 IPC, with default sentence.

Aggrieved by the calendar judgment, the accused preferred Crl.A.No.130 of 2004 before the V Additional Sessions Judge, Warangal, the said criminal appeal was allowed, setting aside the conviction not passed by the Trial Court finding both the accused guilty for the offences they allegedly committed, acquitted them.

The present revision is filed by the complainant challenging the reversal judgment of the Appellate Court on various grounds, mainly on the ground that the Appellate Court wrongly appreciated the evidence on record and though the petitioner successfully established his ownership and possession and criminal trespass of accused 1 & 2 and also sustaining injuries by the petitioner which is supported by medical evidence of P.W-3 Doctor, who treated P.W.1 in the hospital, coupled with ExsP-2 & P-3, but the Appellate Court did not appreciate this fact in proper perspective and committed an error.

The present petition is filed under Section 397 and 401 of Cr.P.C. Jurisdiction of this Court under Section 397 and 401 of Cr.P.C. is limited and the High Court may exercise such power only when the Court found that there is a manifest perversity in the order or the finding recorded by the Court is without any evidence or material, though section 401 of 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 or procedure, neglect or proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and

circumstances of each case. The discretion conferred on the High Court by Section 401 of I.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. Therefore, keeping in mind the scope of revision, I would like to decide the present issue before this Court.

As seen from the material on record, the first respondent was guilty for the offences mentioned supra, as evident from the calendar and judgment of Trial Court believing the evidence, coupled with evidence of P.W.3-Doctor and another witness P.W.4-M. Ilaiyah. But, the Appellate Court reversed the said finding of the Trial Court on the ground that the evidence of P.W.3 did not inspire confidence of the Appellate Court. The Appellate Court also observed that P.W.4 is no other than the complainant's farm servant and his evidence cannot be totally believed. Therefore, the testimony of P.Ws 3 & 4 were totally disbelieved and based on the sole testimony of injured, the Appellate Court did not believe the case of the prosecution and acquitted them. When the Appellate Court on reappraisal of evidence disbelieved the prosecution case, this Court cannot re-appreciate the evidence to come to any other conclusion. Even on analysis of evidence, except interested testimony of P.W.1, no independent corroboration is available. That apart, the complainant and the accused are inimical and the possibility of false implication cannot be ruled out, as such it is difficult to restore Trial Court judgment.

As per Section 401(3) Cr.P.C, this Court cannot convert the acquittal into conviction, though, this Court is competent to exercise power of revision against order of Appellate Court. But, in

the present case, the Appellate Court after disbelieving the evidence of P.Ws.3 & 4, allowed the appeal assigning its own reasons and found them not guilty. Consequently, in view of the bar under 402(3) Cr.P.C it is difficult for me to re-appreciate the case at this stage, since this Court can exercise such power only in exceptional situation. But, acquittal cannot be converted into conviction, in view of the interdict contained under Section 401(3) Cr.P.C. Hence, I find no ground to restore the conviction sentence passed by the Judicial Magistrate of First Class, Mahabubabad in C.C.No.257 of 1999 and reversing the finding recorded by the V Additional Sessions Judge, Warangal in Crl.A.No.130 of 2004. Consequently, the criminal revision case is devoid of merits and it is liable to be dismissed.

In the result, the criminal revision case is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:03.08.2017

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