

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1213 of 2005

JUDGMENT:

The *de facto complainant* in C.C.No.504 of 1999 on the file of II Additional Judicial Magistrate of First Class, Tirupathi, who is examined as Pw.1, filed this Revision, challenging the acquittal of the accused by the Appellate Court in CrI.A.No.451 of 2003 i.e., VI Additional District and Sessions Judge (Fast Track Court), Tirupathi, reversing the conviction and sentence passed by the trial Court in C.C.No.504 of 1999 dt.12.02.2005.

It is the case of the *de facto complainant* that on 18.10.1998 the accused and 12 unknown persons trespassed into his house site with an intention to grab the site and cut the plants, trees and loaded the same into a tractor and thereby caused loss of Rs.6,000/- and later, he lodged a complaint with police, which was registered as a case in Cr.No.55 of 1999 under Sections 447, 427, 506 r/w 149 IPC.

During investigation, the police examined the witnesses, recorded their statements and filed charge sheet before the concerned Court and the Court took the case on file and after securing the presence of the accused, examined the accused under Section 251 Cr.P.C., they pleaded not guilty and claimed to be tried.

During trial, Pws. 1 to 4 were examined and Exs. P.1 to P.17 were marked. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C. explaining the incriminating material appeared against them, they denied the same and reported no defence.

Upon hearing both the counsel, the trial Court found the accused guilty for the offences under Sections 447, 427 and 506 IPC

and sentenced them to suffer RI for a period of three months and to pay a fine of Rs.500/- each with default sentence.

Aggrieved by the conviction and sentence in C.C.No.504 of 1999 by the II Additional Judicial Magistrate of First Class, Tirupathi, the accused preferred an appeal No.451 of 2003, which was allowed by the Appellate Court setting aside the conviction and sentence imposed by the trial Court finding the accused not guilty.

Dissatisfied with the acquittal, the *de facto* complainant preferred this Revision raising several contentions, more particularly, with regard to non appreciation of evidence by the trial Court and the Appellate Court and that the Appellate Court did not record any specific reason to discard the evidence of Pws. 1 to 4 and thereby committed an error in allowing the appeal.

Though this revision was filed by the petitioner/accused represented by his counsel, Sri C. Saran Reddy, but neither appeared before this Court nor got it represented through any other counsel. In such case, this Court cannot dismiss the Criminal Revision Case for default. But, this Court is entitled to decide the revision verifying the record as held in *Misha Sharma v. Vinod Kumar Sharma*¹, wherein it is made clear that a revision petition cannot be dismissed for default. Even if the petitioner or his advocate does not appear the court shall examine the record and decide the revision on merits.

Therefore, persuaded by the law declared by Delhi High Court, I would like to proceed with the matter after verifying the material available on record.

¹ 1990 Cr.LJ. (NOC) 57 (Del.)

Heard learned Public Prosecutor appearing for the State of Andhra Pradesh and Sri C. Mastan Naidu, learned counsel for respondents/accused.

It is the case of the petitioner that he is owner and possessor of the subject land and the respondents/accused allegedly trespassed into the suit land and caused mischief amounting to Rs.6,000/-. Admittedly, a Civil Suit No.880 of 1997 was pending by the date of lodging the complaint, the Certified Copy of the same is marked as Ex.P.11. Similarly, the respondents/accused also claiming to be in possession and enjoyment of the schedule property and produced a copy of the interim order Dt.5.11.1997 in I.A.No.1613 of 1997 in O.S.No.880 of 1997 on the file of I Additional District Munsif Magistrate, Tirupathi, and the Order in Civil Revision Petition No.1390 of 1998 passed by this Court, which are marked as Exs. D.1 and D.2 respectively.

These two documents would clinchingly establish that an interim injunction is granted in favour of the accused, which was subsisting as on the date of lodging the complaint by the appellant herein. When the accused were found in possession and enjoyment of the suit schedule land, *prima facie*, by the trial Court, confirmed by the revisional Court, the alleged trespass cannot be accepted and therefore, the appellate Court based on Exs. D.1 and D.2 rightly found the accused not guilty for the offences punishable under Sections 447, 427, 506 r/w 149 IPC as they are in possession and enjoyment of the subject property and obtained interim order of injunction from I Additional District Magistrate, Tirupathi, confirmed by this Court in Revision under Ex.D.2.

In such a case, entering into the subject land would not constitute any offence much less punishable under Sections 427, 427 and 506 IPC. Therefore, the Appellate Court rightly allowed the Appeal setting aside the conviction and sentence imposed by the trial Court and the Judgment of the appellate Court does not warrant interference of this Court while exercising power under Sections 397 and 401 Cr.P.C. is limited as no manifest perversity or apparent error is brought on record in appreciation of evidence by the Appellate Court and therefore, this Civil Revision case is liable to be dismissed as it devoid of merits.

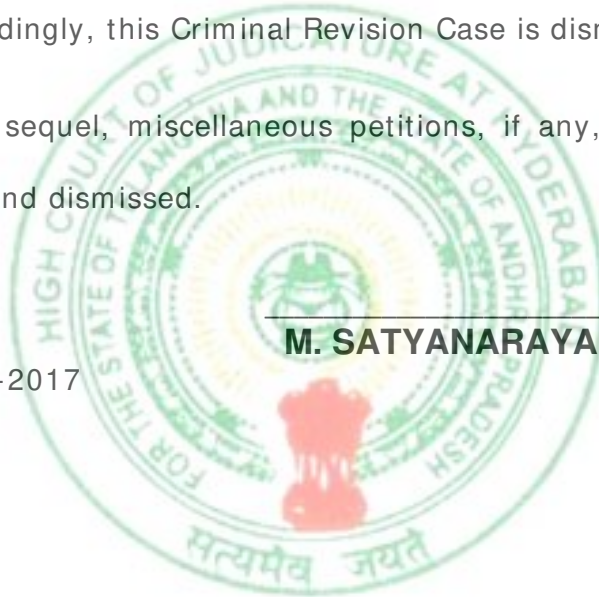
Accordingly, this Criminal Revision Case is dismissed.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 24-08-2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CrI.R.C. No.1213 of 2005

Dt. 24-08-2017

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