

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.R.C. NO.2375 OF 2017

ORDER:

This revision is filed under Section Sections 397 and 401 of Cr.P.C. questioning the propriety, legality and correctness of the judgment dt.18.08.2017 in CrI.A.No.33 of 2016 passed by the VIII Addl. District and Sessions Judge, Miryalaguda.

2. The petitioner/A-2 in C.C.No.947 of 2010 on the file of the Judicial Magistrate of First Class, Miryalaguda who was convicted for the offences punishable under Sections 304-A and 338 IPC by the trial Court, preferred an appeal before the VIII Addl. District and Sessions Judge, Miryalaguda in CrI.A.No.33 of 2016 whereby the appellate Court set aside the conviction and sentence for the offence punishable under Section 338 IPC while reducing the substantive sentence for the offence punishable under Section 304-A IPC to six months from one year while maintaining fine imposed by the trial Court.

3. The petitioner herein not satisfied with the reduction of sentence, the present revision is filed on various grounds.

4. The case of the prosecution, in nutshell, is that on 06.05.2010 at about 5 a.m. PWs.1, 2 and one Shankaraiah along with family members went to Vijayawada from Hyderabad to have darshan of Kanakadurga in Qualis vehicle bearing No. AP.10.7969 driven by petitioner/A-2 and while they were returning in the same vehicle, they reached outskirts of Kukkadam village, the petitioner/A-2 drove the vehicle in rash and negligent manner, dashed against lorry bearing No.AP.28.AG.8789 parked negligently by A-1 from its rear side on Narkatpally to Addanki State Highway. In the said accident, sons of PW-2 and PW-2 sustained grievous

injuries and Shankaraiah succumbed to injuries while shifting to hospital. On the strength of the report Ex.P-1, police registered case in Crime No.30 of 2010 and issued F.I.R. marked as Ex.P-6. The Sub-Inspector of Police, PW-11 recorded the statements of witnesses under Section 161 Cr.P.C., inspected and observed the scene of offence in the presence of panchayatdars and held inquest over the dead body of the deceased Shankaraiah in the presence of inquest panchayatdars, prepared inquest Ex.P-4 panchanama wherein the mediators opined that the death was due to the injuries received in the accident. The Doctor PW-10 conducted post mortem over the dead body of the deceased and issued Ex.P-5 post mortem report. The crime vehicles were got examined by the Motor Vehicle Inspector who issued Exs:P-8 and P-9 reports and after completion of investigation, charge sheet was filed before the learned Magistrate.

5. The learned Magistrate took the case on file and after following necessary procedure, recorded the evidence of PWs.1 to 11, marked Exs.P-1 to P-12 on behalf of the prosecution and after closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C. explained the incriminating material that appeared against them in the evidence of prosecution witnesses and they denied the same and reported no defence.

6. Upon hearing argument of both the counsel, the trial Court found the petitioner guilty for the offences punishable under Sections 304-A and 338 IPC, convicted and sentenced to undergo R.I. for a period of one year and to pay fine of Rs.2,000/- in default to suffer imprisonment for one month for the offence punishable under Section 304-A IPC and also sentenced to undergo R.I. for six months and to pay fine of Rs.1,000/- in default to suffer imprisonment for 15 days for the offence punishable

under Section 338 IPC. Acquitted first accused for the offences punishable under Sections 304-A and 338 of IPC.

7. Aggrieved by the conviction and sentence passed by the learned Magistrate, the petitioner preferred an appeal in CrI.A.No.33 of 2016 in the appellate Court wherein the conviction and sentence for the offence under Section 338 IPC was set aside while confirming the conviction for the offence punishable under Section 304-A IPC but reduced the substantive sentence to six months and to pay fine of Rs.2,000/-.

8. The present revision is filed by the petitioner, assailing the judgment in CrI.A.No.33 of 2016 on various grounds; the main ground urged before this Court by the learned counsel for the petitioner Sri M.Venkata Swamy is that the accident occurred not due to rash and negligent act of the petitioner, but due to the negligence of the driver of the lorry (A-1 before the trial Court) since the lorry was not holding valid insurance as on the date of the accident, this petitioner was implicated, falsely. Apart from that the evidence of PWs.1 and 2 is contradictory and based on the statements of PWs.1 and 2 without insisting any independent corroboration, the trial court and appellate court recorded concurrent fact findings against the petitioner and committed an error, finding the petitioner guilty and sentenced him as mentioned supra and prayed to set aside the same.

9. Confining to the grounds urged before this court in the revision, I would like to decide the revision filed under Section 397 and 401 Cr.P.C. under which the jurisdiction of this court is limited.

10. [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.

11. 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.

12. 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 this 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.

13. 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 other person unless he had an opportunity of being heard personally or by a pleader in his own defence;

¹ (1964) 1 Cr.L.J. 443 (SC)

² 48, Cr.L.J 173, 174 (Pat)

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.

14. 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.

15. It is the case of the prosecution from the beginning that PWs.1, 2 and Shankaraiah along with children were travelling in Qualis vehicle and when the vehicle reached Kukkadam village, the vehicle hit the stationed lorry, due to the rash and negligent act of the driver of the vehicle, the petitioner herein. To substantiate this contention, before the trial court, the prosecution examined PW-1 who lodged the complaint and who was present in the vehicle at the time of the accident, and PWs.2 to 5 are the eyewitnesses to the same accident as they were also travelling in the vehicle.. The testimony of PWs.1 to 5 is sufficient to believe the cause of accident, since PWs.2 to 5 are the injured eyewitnesses in the same accident. Exs.P-10 to P-12 are the wound certificates issued by the hospital concerned to establish that these three persons sustained injuries

in the same accident. When PWs.2 to 5 are the injured witnesses, their presence cannot be disbelieved except where the defence is able to disprove their presence at the time of the accident and the injured witnesses in the accident is wholly reliable witnesses and they came up with an inbuilt guarantee and there is no possibility of implicating any other person at a particular moment. In *Brahm Swaroop and another v. State of Uttar Pradesh*³ 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 eyewitnesses is worthy of credence.

16. In view of the law declared by the Apex Court, the evidence of PWs.1 to 5 cannot be rejected on the ground that they are related to the deceased Shankaraiah. The witnesses PWs.1 to 3 are the most natural witnesses as they were traveling along with their father in the vehicle while returning, after darshan of Kanakadurga on pilgrimage. Therefore, the evidence of PWs.2 to 5 cannot be disturbed on any ground. PW-1 is the person who gave the report is an eyewitness and Ex.P-1 is the report which set the criminal law into motion and PWs.1 to 5 are undisputedly family members of the deceased Shankaraiah, but they cannot be termed as interested witnesses, since, they are not going to any benefit out of criminal litigation. On the other hand, they are natural and wholly reliable witnesses. Therefore, based on their evidence, the courts below recorded concurrent fact findings that the accident occurred due to the rash and negligent act of the driver of the vehicle, the petitioner herein. The word

³ (2011) 6 SCC 288

‘rashness or negligence’ is not defined under the Indian Penal Code. The word ‘negligence’ can be said to be failure to take reasonable care and caution while driving the vehicle as prudent driver. Therefore, when PWs.1 to 5 categorically stated that the petitioner failed to take necessary care and caution, though he is aware of in consequences that flow from such driving by the petitioner can safely be said negligent in driving the vehicle, consequently the fact findings recorded by both the courts below cannot be interfered with by this Court.

17. The contention raised before this Court is that the driver of the lorry who parked the vehicle alone is negligent. But, the trial court found him not guilty and no appeal was preferred against the acquittal of first accused in C.C.No.947 of 2010 and now this Court cannot interfere with the fact findings recorded by the courts below to hold that A-1 the driver of parked lorry is responsible for causing the accident.

18. No doubt, the first accused stationed the vehicle in negligent manner in the middle of the road, but the petitioner still under obligation to take necessary precautions while driving the vehicle, when a vehicle was parked on the middle of the road, which is ahead to Qualis vehicle while proceeding in a specific direction. In such a case, when the petitioner failed to take necessary care and hit stationed lorry, no negligence is attributable to the driver of the lorry, but the petitioner herein alone responsible for hitting the stationed vehicle without taking proper care and caution as required by an ordinary prudent driver, thereby he is alone is guilty of rash and negligent act and consequently the trial court and appellate court recorded concurrent fact findings that he is responsible for the accident. When both the courts below found the petitioner guilty, this court cannot interfere with such concurrent fact findings.

19. 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. NEHRUSADAN*⁴.

20. 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*⁵.

21. Therefore, following the principles laid down in the above two judgments, I am unable to interfere with the fact findings recorded by both the courts below.

22. The next contention raised by the learned counsel for the petitioner is that the appellate court though reduced substantive sentence from one year to six months, it is still excessive. But, this contention cannot be accepted in view of law declared by the Apex Court in *State of Punjab Vs. Balwinder Singh and others*⁶ wherein it was held that it is settled law that sentencing must have a policy of correction. If anyone has to become good driver, must have a better training in traffic laws and moral responsibility with special reference to potential injury to human life and limb and thus the punishment must commensurate with seriousness of the offence.

⁴ 1977 Cr.L.J. 1101

⁵ (1986) 3 SCC 445

⁶ AIR 2012 SC page 861

23. By applying the principles laid down in the above decisions by the Apex Court, the court must impose appropriate punishment taking into consideration the gravity of offence. Therefore, the appellate Court rightly awarded sentence of six months.

24. So far as the application of Probation of Offenders Act and Section 360 of Cr.P.C., the Apex Court in Balvir Singh Vs. State of Haryana⁷ categorically held that the provisions of Probation of Offenders Act cannot be invoked while sentencing the accused for the offence punishable under Section 304-A of I.P.C.

25. Therefore, In view of the facts and circumstances of the case, I am unable to accept the request of the counsel for the accused to apply the provisions of Probation of Offenders Act and to let off the accused with fine, since the law laid down by the Apex Court is totally against taking lenient view.

26. Hence, the question of reducing substantive sentence further does not arise while exercising power by this Court under Sections 397 and 401 Cr.P.C. Therefore, I find no substance in the contention raised by the counsel for the petitioner and consequently, the revision is devoid of merits and it is liable to be dismissed.

27. In the result, the criminal revision case is dismissed at the stage of admission.

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

M.SATYANARAYANA MURTHY, J

DATE: 30-08-2017
ccm

⁷ AIR 2000 SC page 1667

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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