

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1701 of 2011

ORDER:

1 This Criminal Revision Case is filed under Section 397 and 401 Cr.P.C. challenging the order dated 28.07.2011 passed in Criminal Revision Petition No.71 of 2010 on the file of the Court of III Additional District Judge (FTC) Bhimavaram, wherein and whereby the order dated 08.11.2010 passed in CrI.M.P.No.3443 of 2010 in Cr.No.78 of 2010 by the learned II Additional Judicial First Class Magistrate, Bhimavaram was set aside.

2 The learned counsel for the petitioner submitted that the Revisional Court without considering the factual aspects allowed the revision petition on erroneous grounds. He further submitted that the investigating agency seized an amount of Rs.5.00 lakhs from the accused which belongs to the petitioner, who is the de-facto complainant.

3 Per contra, the learned counsel for the respondent Nos.2 to 5 (accused Nos.3, 5, 6 and 9) submitted that the money was recovered from the possession of the accused No.7, therefore, the petitioner is not entitled to retain the money. He further submitted that the trial Court allowed the CrI.M.P.No.3443 of 2010 on erroneous grounds.

4 The facts leading to filing of the present revision case are as follows: The petitioner that they will sell the gold for lower price. Believing the words of the respondent Nos.2 to 5, the petitioner secured an amount of Rs.10,00,000/- and went to Akiveedu to purchase gold. The respondents had forcibly taken away the money from the petitioner by threatening him with dire consequences. Basing on the complaint lodged by the petitioner, the Station House Officer, Akiveedu registered

the case in Cr.No.78 of 2010 for the offences punishable under Sections 420, 384 and 307 r/w 34 of IPC. During the course of investigation an amount of Rs.5.00 lakhs was seized from the possession of accused No.7 and the said amount was deposited in the Court. While the things stood thus, the petitioner filed CrI.M.P.No.3443 of 2010 under Section 457 Cr.P.C. for interim custody of the money. The trial Court, after affording reasonable opportunity to both parties, allowed the petition. Feeling aggrieved by the order of the trial Court in CrI.M.P.No.3443 of 2010 dated 08.11.2010, the respondent Nos.2 to 5 herein preferred Criminal Revision Petition No.71 of 2010 before the III Additional District Judge (FTC) Bhimavaram, which was allowed. Hence the present Criminal Revision Case by the de-facto complainant.

5 As per the version of the prosecution, the respondent Nos.2 to 5 herein took away the money from the petitioner by force. The contention of the respondent Nos.2 to 5 is that the money belong to them. Whether the money belongs to the petitioner or to the respondent Nos.2 to 5 will be decided during the course of trial. A perusal of the record reveals that the respondent Nos.2 to 5 filed CrI.P.No.3475 of 2010 under Section 457 Cr.P.C before the trial Court. The trial Court after affording reasonable opportunity to both parties, arrived at a conclusion that the respondent Nos.2 to 5 herein failed to prove that money was recovered from them and dismissed the said petition on 08.11.2010. For the reasons best known to them, the respondent Nos.2 to 5 did not challenge the order dated 08.11.2010. Therefore, the order passed in CrI.M.P.No.3475 of 2010 became final. However, the respondent Nos.2 to 5 filed Criminal Revision Petition No.71 of 2010 challenging the order dated 08.11.2010 passed in CrI.M.P.No.3443 of 2010. It is not the case of respondent Nos.2 to 5 that Rs.5.00 lakhs was seized from them. For

one reason or the other, accused No.7 did not chose to file petition seeking interim custody of money. The Revisional Court has not considered the filing of CrI.M.P.No.3475 of 2010 by the respondent Nos.2 to 5. Had the Revisional Court considered this aspect, certainly the finding would be otherwise.

6 The trial Court allowed the petition with the following directions:

“The petitioner shall execute a self bond for Rs.5.00 lakhs with two sureties for a likesum each and with a direction to the petitioner that he should bring the said amount of Rs.5.00 lakhs as and when required by the Court and the title deeds of the two sureties shall be furnished to the Court.”

7 A perusal of the above clearly reveals that the trial Court has taken reasonable care to protect the interest of both parties while allowing the petition. Whether the money seized by the police belongs to the petitioner or to the respondent Nos.2 to 5 will be decided during the course of trial. If the order of the revisional court is allowed to stand, certainly, it would amount to miscarriage of justice. The order passed by the revisional court is not sustainable either on facts or in law. Hence the order of the revisional court is liable to be set aside.

8 For the foregoing discussion, the Criminal Revision Case is allowed, setting aside the order dated 28.07.2011 passed in Criminal Revision Petition No.71 of 2010 on the file of the Court of III Additional District Judge (FTC) Bhimavaram. As a sequel, miscellaneous petitions if any pending in this Criminal Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 05.10.2017
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