

SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL NO. 1607 OF 2007

J U D G M E N T :

This Criminal Appeal is preferred by the appellant, who is PW-5 [Investigating Officer] against the judgment of I-Additional Sessions Judge, Mahboobnagar in Criminal Appeal No. 47 of 2007, dated 08/6/2007, wherein the learned Sessions Judge allowed CrI.A.No. 47 of 2007 and set aside the conviction and sentence inflicted by the Special Judicial Magistrate of First Class, Prohibition and Excise, Mahbubnagar, in C.C.No.23 of 2006 for the offence punishable under section 338 of I.P.C., and sentenced the accused to undergo simple imprisonment for a period of six months and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for three months.

2. The learned Sessions Judge in the said judgment made an observation that PW-5, who is the appellant herein conducted the investigation in the said crime perfunctorily observing as such, he directed the Magistrate to launch prosecution for the offence punishable under section 193 of I.P.C., against PW-5 for his illegal conduct. Aggrieved by the said part of the judgment, this criminal appeal is preferred by PW-5 on the ground that the court below erred in directing the Magistrate to initiate complaint against the appellant/accused for the offence punishable under section 193 of I.P.C. The learned Judge ought to have seen that a cognizable

offence was disclosed in the complaint incorporating the date of offence and giving reasons for the delay in lodging the complaint. The learned Judge ought to have seen that on receipt of the complaint the appellant herein issued F.I.R., mentioning the reasons for the delay in lodging the complaint. The learned Judge erred in observing that there is omission on the part of the appellant herein in conducting investigation by non-examination of inmates of the other vehicle, who rescued and admitted the injured in the hospital. The learned Judge ought to have seen that the accident occurred on 12/10/2005 at 05:00 a.m., at that time PW-3 alone was there and the injured was in the state of shock.

3. Heard the learned counsel appearing for the appellant/PW-5 and the learned Public Prosecutor representing the Respondent/State.

4. The counsel for the appellant submits that the approach of the court below in directing the complaint to be registered against the appellant/PW-5 is completely erroneous. The appellant/PW-5 in fact has conducted the investigation as required in the circumstances of the case and based on the investigation conducted by the appellant, the trial court in fact convicted the accused, considering that the evidence collected by the appellant/PW-5 was sufficient. A perusal of the impugned judgment would show that the learned Judge wanted the investigation to be conducted in a particular manner. He gives importance to the lapse on the part of the appellant in not

enquiring the particulars of the tempo-van and in recording the statement of the persons responsible for shifting PW-3 to Shadnagar.

5. The deposition of the appellant herein would show that after receiving the complaint on 18-10-2005, he registered the case and issued FIR and recorded the statement of PW-1 and visited the N.I.M.S. Hospital, Hyderabad, where he recorded the statement of PW-3 who was undergoing treatment at NIMs Hospital, Hyderabad. On 18/10/2005 itself after examining PW-1, he visited the scene of offence and conducted scene of offence panchanama and rough sketch. He also effected the arrest of the accused on his surrender, recorded his confession and produced him before the court for judicial custody. He also collected medical certificate pertaining to PW-3. Hence, the evidence of PW-5 shows that he has investigated the case according to his sense of importance and sense of requirement. It cannot be expected that the police officials would investigate the matter in the lines, which the court expects them to investigate. There may be some lapses in the investigation which lapses may become basis for acquitting the accused. But merely because there are some lapses in the investigation it cannot be said that the said police officials have given false evidence. This is definitely not the case which falls within Section 193 of I.P.C. Absolutely no intention on the part of the appellant herein to give false evidence is made out. There is also no fabrication of evidence and it is only certain lapses that were considered by the court

below as giving false evidence and fabricating false evidence. Hence, in view of the above, this Court opines that findings of the learned Sessions Judge to the extent of directing the Magistrate to register a case against the appellant/PW-5 for the offence punishable under section 193 I.P.C. cannot be sustained and the same be and is hereby set aside.

5. In the result, this Criminal Appeal is allowed.

6. As a sequel, miscellaneous petitions if any, pending in this Criminal Appeal shall stand disposed of.



SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL NO. 1607 OF 2007

[RESULT :: ALLOWED]



Circulation No. 322
Date: 16-08-2018
Court Master : I s L