

**THE HON'BLE SRI JUSTICE P.KESHA RAO**

**CRIMINAL REVISION CASE No.1184 OF 2005**

**ORDER:**

Heard the learned counsel for the petitioners as well as the learned Public Prosecutor appearing for the respondent-State.

The present Criminal Revision Case is filed questioning the conviction and sentence imposed against the petitioners for the offences under Section 126(2) of the Representation of Peoples Act, 1996 and Sections 143 and 353 r/w 149 I.P.C.

The gravamen of charge against the petitioners is that on 13.07.2001 at 8.30 p.m., a procession was being conducted by one wing of Telugu Desam Party in violation of election code. When the Sub-Inspector of Police, Penpahad Police Station asked A.1, who was contesting as M.P.T.C., not to take procession as the scheduled time to canvass for election schedule is over by 7.30 a.m. on 13.07.2001, A.1 along with other accused pounced upon the Sub-Inspector and other police officials, abused them in filthy language and obstructed them from discharging lawful duties. The said incident resulted in launching of criminal prosecution for the offences as stated above. After completion of investigation, a charge sheet came to be filed against the petitioners-accused. After taking cognizance of the offence, the trial Court numbered the case as C.C.No.413 of 2001. After full-fledged trial, the petitioners were convicted and sentenced for the above said offences. Aggrieved by the judgment of the trial Court, the petitioners preferred an appeal in CrI.A.No.96 of 2004. After hearing, the said appeal was also dismissed on 22.07.2005

confirming the judgment of the trial Court. Aggrieved by the same, the present Criminal Revision Case is filed.

The learned counsel appearing for the petitioners would contend that both the Courts below committed material irregularity in relying on the testimony of P.Ws.1 to 6, who are the police officials. P.Ws.7 to 10, who are the independent witnesses, have not supported the case of the prosecution. He also contended that the prosecution miserably failed to establish before the trial Court by placing any documentary evidence that the election was scheduled to be held on 15.07.2001. Apart from the same, no documentary evidence was adduced to establish that P.Ws.1 to 6 were posted at Dubbagudem, Athmakur (S) Village of Nalgonda District, within the limits of Suryapet town. As far as the petitioners herein are concerned, they are strangers to P.Ws.1 to 6 and no test identification parade was conducted. P.Ws.1 to 6 have not stated the names of all the accused. In the light of the above said anomalies, he requested this Court to set aside the judgment passed by the lower appellate Court. He further submitted that the offence is of the year 2001 and at this length of time, sending the petitioners to the imprisonment will not be justified. Therefore, he requested that the period already undergone by the petitioners can be considered as sufficient apart from enhancement of the fine amount. To support his contentions, he relied on the decision of Apex Court reported in **Alam and others v. State of Rajasthan**<sup>1</sup>. In the said decision, the Apex Court held as under:

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<sup>1</sup> AIR 1980 SC 1657

“3. We have been taken through the judgment of the High Court and the relevant part of evidence in the case. We do not see any ground for not agreeing with the appreciation of the evidence by the Courts below. The prosecution case is clearly made out. But taking into account the fact that the offence was committed as long ago as November, 1968 and the conviction by the Trial Court was in 1970, we do not think that we will be justified in sending back the appellants to jail. While, therefore, confirming the conviction of the appellants, we reduce the period of imprisonment to the period already undergone and impose a fine of Rs.300/- in addition to the fine of Rupees 200/- already imposed on them by the courts below. In default of payment of fine, the appellants will undergo further imprisonment for a period of six months. Fine to be paid within three months. With this modification of the sentence, the appeal is dismissed.”

He also relied on another decision of the Apex Court reported in **State of Karnataka v. Marigowda**<sup>2</sup>. In the said decision, the Apex Court observed as under:

“3. In revision the High Court interfering with concurrent findings of fact, acquitted the accused. A perusal of the judgment of the High Court makes it obvious that the High Court had misdirected itself into thinking that the three amounts paid by PW 2 into the District Co-operative Central Bank pertained to the amounts which the accused was alleged to have misappropriated. PW 2 expressly stated that the amounts had been received by him from Mallinathapura Cooperative Society, etc., and his evidence was not challenged in cross-examination. No suggestion was made to him and there was no justification whatsoever for the High Court to reach the conclusion that these amounts were the very amounts which the accused was alleged to have misappropriated.

4. We are afraid that the judgment of the High Court cannot be sustained. It is, therefore, set aside and the conviction is restored. But having regard to the time that has elapsed, we do not think that it is necessary to send the respondent back to jail. In the circumstances of the case we reduce the sentence of imprisonment to the period already suffered by him, but increase the fine imposed upon him by the trial court from Rs.500/- to Rs.1,750/-. If the amount of fine is realised, it will be paid to the Aladahalli Large Scale Co-operative Society. In

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<sup>2</sup> AIR 1982 SC 1171

default of payment of fine, the accused will undergo rigorous imprisonment for a period of three months.”

In the case on hand, the alleged violation of election code is of the year 2001. From the perusal of the material on record, the evidence adduced by the prosecution will not clinchingly establish that the petitioners have committed the offence as alleged against them. As rightly contended by the learned counsel for the petitioners, no documentary evidence has been placed before the trial Court that the elections were scheduled to be held on 15.07.2001 and that P.Ws.1 to 6 were posted on duty at Dubbagudem of Athmakur (S) Village of Nalgonda District within the limits of Suryapet town. Apart from the same, when the petitioners are totally strangers to P.Ws.1 to 6, no test identification parade was also conducted for identifying that the petitioners are the same persons, who alleged to have violated the election code in taking out a procession after the scheduled time. Be that as it may, as rightly pointed out by the learned counsel for the petitioners, the offence is of the year 2001 and at this length of time, it may not be appropriate to send the petitioners to imprisonment.

However, the learned Public Prosecutor appearing for the respondent-State supported the judgment of the lower appellate Court and this Court has been taken through the judgment of the lower appellate Court and the relevant part of evidence. This Court does not find any reason for not agreeing with the appreciation of evidence evaluated by both the Courts below.

Therefore, the prosecution case is established beyond all reasonable doubt.

But taking into consideration the fact that the offence is of the year 2001, this Court does not think that it will be justified in sending back the petitioners to jail. In fact, the petitioners were in judicial custody for a period of 7 days, except the petitioner Nos.15 and 16, who were in judicial custody for 16 days. As far as the petitioner No.8 and 15 are concerned, they died during the pendency of the present revision and the proceedings are abated against them. Therefore, this Court while confirming the conviction imposed on the petitioners, reduce the sentence to the period already undergone and impose a fine of Rs.3,000/- payable by each of the petitioner, in addition to the fine amount of Rs.2,000/- already imposed on them by both the Courts below, on all the three counts. In default of payment of fine amount, the petitioners shall undergo further imprisonment for a period of six months. However, it is needless to observe that the fine amount as imposed by this Court shall be payable within a period of two months from the date of receipt of a copy of this order.

The Criminal Revision Case is dismissed with the above observations.

Pending miscellaneous petitions, if any, shall also stand closed.

**P.KESHAVA RAO,J**

28<sup>th</sup> AUGUST 2018.  
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