

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.1293 of 2015

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State.

The present revision case is filed questioning the judgment in CrI.A.No.145 of 2014 dated 25.03.2015 on the file of the Additional Metropolitan Sessions Judge, Ranga Reddy District at L.B. Nagar, modifying the sentence of simple imprisonment of two years and one year for the offences under Sections 332 and 427 IPC into imposition of fine of Rs.4,000/- and Rs.1,000/- for the offence under Sections 353 and 427 IPC respectively.

The case of the prosecution is that on 08.11.2012, LW.1 lodged a complaint stating that he was performing traffic duty at Nagole X road traffic signal point. At that time, the petitioner drove his bike bearing No.AP 24 L 2657 without stopping at the red signal. When he asked the petitioner to stop his vehicle at road side, he got angry and caught his collar belt with hands resulting in injury to his right hand index finger and while abusing him in filthy language manhandled him. In the process, his cell phone as well as man pack set were thrown on the road and they got damaged. Since the petitioner obstructed his official duties, he lodged a complaint. Pursuant thereto, Crime No.1551 of 2012 was registered for the offence under Sections 332 and 427 IPC. During the course of investigation, LWs.1 and 2 were examined by LW.9 and recorded their detailed statements. He visited the scene of offence, caused enquiry, examined the eye witnesses i.e., LWs.3 to 5 and also recorded their statements. In fact, LW.1 was treated by

LW.8 and issued medical certificate and opined that the injuries are simple in nature. After completion of investigation, a charge sheet was laid. The learned Magistrate, after taking cognizance of the offence, numbered the case as C.C.No.20 of 2013.

The prosecution, in order to prove the guilt of the accused, in all examined PWs.1 to 6 and marked Exs.P1 to P9. On behalf of the petitioner, no defence evidence was produced.

After hearing and analyzing the evidence on record, the learned Magistrate by judgment dated 04.12.2014, convicted the petitioner for the offence under Sections 332 and 427 IPC and sentenced him to undergo simple imprisonment for a period of two years and one year respectively. Aggrieved by the said judgment, the petitioner filed CrI.A.No.145 of 2014 on the file of the Additional Metropolitan Sessions Judge, Ranga Reddy District at L.B. Nagar. The lower appellate Court, after appreciating the matter, allowed the appeal in part by judgment dated 25.03.2015 modifying the sentence of imprisonment on both the counts into fine of Rs.4,000/- and Rs.1,000/- respectively. In default, to undergo simple imprisonment for three months. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioner contended that both the Courts below failed to appreciate that no document was filed to show that PWs.1 and 2 are on duty. Therefore, their evidence is doubtful. He also contended that if really the petitioner damaged the cell phone and man pack set, the investigating officer ought to have seized and deposited the same before the Court below. In the absence of the said vital piece of evidence, any amount of doubt is thrown on the case of the prosecution. Both

the Courts below also failed to appreciate that there was correction with regard to vehicle number in Ex.P1, complaint. The prosecution failed to examine any independent witness in this case. PWs.3 and 4, who were examined as panch witnesses, turned hostile and not supported the case of the prosecution. There is inconsistency in the evidence of PWs.1 and 2 and therefore, their evidence is not trustworthy.

Per contra, learned Public Prosecutor appearing for the respondent State supported the impugned judgment.

Having heard both the counsel and from a perusal of the material on record, the specific case of the prosecution is that while PW.1 was performing the traffic duty at Nagole X road on 08.11.2012 at 2045 hours, the petitioner came on his motor bike bearing No.AP 24 L 2657 without stopping at the red signal. When he was stopped, he caught hold of the collar belt of PW.1 with his hands resulting in injury to his right hand index finger and while abusing him in filthy language man handled him. In the process, his cell phone and man pack set were thrown out on the road and got damaged.

PW.1 deposed that when he was man handled by the petitioner, he sustained an injury. His cell phone as well as man pack set were thrown out and they got damaged. However, the prosecution has not seized the said articles and placed on record. Even as per the evidence of PW.1, he sustained one injury. However, as per the medical certificate i.e., Ex.P6 issued by PW.5, three injuries are mentioned thereby there is an inconsistency in the evidence of PW.1 and Ex.P6. That apart, PWs.1 and 2, who are the police constables, examined as eye witnesses. However, PW.2

has not supported the evidence of PW.1 in respect of the injury caused in the incident. PWs.3 and 4, who are the panch witnesses, turned hostile and they have not supported the case of the prosecution. If the evidence of PWs.3 and 4 are discarded, the only evidence remains is PWs.1 and 2. However, there is inconsistency in the evidence of PWs.1 and 2 with regard to receiving of injury by PW.1 vis-à-vis Ex.P6. Therefore, the evidence of PW.1 is not trustworthy. In fact, as per the prosecution, LWs.4 and 5 are the independent witnesses to speak about the incident. However, for the reasons best known to the prosecution, they are not examined. It is relevant here to mention that PW.1 in his evidence has not deposed the presence of PW.2. Even in the complaint i.e., Ex.P1, the presence of PW.2 was not mentioned. Further, if really the cell phone and man pack set of PW.1 are damaged, they ought to have been seized, but there is no seizure panchanama. The vehicle was also not seized. Therefore, in the light of the discrepancy in the evidence of PW.1, inconsistency with regard to the injuries in the evidence of PW.1 and Ex.P6 and the correction of the vehicle number in Ex.P1 throws any amount of doubt on the case of the prosecution. When PW.1 has specifically stated that he was man handled and his cell phone and man pack set are damaged, and when they are not seized, the petitioner can be given benefit of doubt.

In the light of the discussion made supra with regard to the inconsistency in the evidence of PWs.1 and 2, non-examination of LWs.4 and 5, who are the independent witnesses, non-seizure of cell phone and man pack set, and PWs.3 and 4, who were examined as panch witnesses, but declared as hostile, gives rise to

any amount of doubt and this Court can safely presume that the prosecution has not proved its case beyond reasonable doubt, whereby the petitioner can be given benefit of doubt.

Accordingly, the criminal revision case is allowed, setting aside the judgment in CrI.A.No.145 of 2014 dated 25.03.2015 on the file of the Additional Metropolitan Sessions Judge, Ranga Reddy District at L.B. Nagar, modifying the judgment passed by the II Metropolitan magistrate, Cyberabad, L.B. Nagar in C.C.No.20 of 2013 dated 04.02.2014.

Miscellaneous petitions, if any, shall stand closed.

Date: 01.10.2018.
ES



P. KESHAVA RAO, J