HIGH COURT OF TRIPURA
AGARTALA
Crl. Rev. P No.54/2017

Smti Khushi Rani Das,
Wife of Late Atal Das,
Resident of Village - Kushamara,
P.S-Kakraban, District-Gomati, Tripura.

…… Petitioner(s).

Versus

1. Sri Adhir Ranjan Kashari,
Son of Late Hari Pada Kashari,
Resident of village- Kushamara,
PS-Kakraban, District-Gomati, Tripura.

2. Sri Dhirendra Das,
Son of Late Jogendra Das,
Resident of village-Kushamara,
PS-Kakraban, District-Gomati, Tripura.

3. The State of Tripura,
(represented by the Secretary, Home,
Govt. of Tripura, P.O-Kunjaban,
P.S-New Capital Complex, District-West Tripura.

…… Respondent(s).

BEFORE
THE HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY

For Petitioner(s)	:	Mr. P. Majumder, Advocate.
For Respondent(s)	:	Mr. R. Datta, Public Prosecutor. Mr. D. K. Das Chowdhury, Advocate.
Date of hearing	:	27th November, 2020.
Date of Judgment & Order	:	**4th December, 2020.**
Whether fit for reporting	:	NO.

JUDGMENT AND ORDER

[1] The challenge in this criminal revision petition is to the judgment dated 13.07.2017 passed by the learned Additional Sessions Judge, Gomati Judicial District, Udaipur in Case No. Criminal Appeal 20(02) of 2016 whereby he affirmed the judgment and order of acquittal passed by the learned Chief Judicial Magistrate, Gomati Judicial District, Udaipur by his judgment and order dated14.03.2016 in Case No.CR 44 of 2015 acquitting the respondents No.1 and 2 from the charges of offences punishable under Sections 427 & 506 read with Section 34 of the Indian Penal Code (IPC hereinafter).

[2] The brief facts which have led to the filing of this revision petition are as under:

Smt. Khushi Rani Das, wife of Sri Atal Das of Kakraban of said Gomati district lodged a written complaint with the Officer-in-Charge of Kakraban police station in Udaipur alleging, inter alia, that she along with other women of her village organised a seminar in their village on 16.06.2015 for celebration of 125th birth anniversary of Dr. B. R. Ambedkar. The seminar begun at 1 'O' Clock in the afternoon and came to end at 6.30 pm. After the programme was over, the respondents came there and used abusive words towards those who participated in the programme. They also damaged some of the chairs which were brought

from a local decorator for the participants. The complainant sought for police action against the respondents for their overt acts.

[3] Since the information lodged by the complainant related to non-cognizable offence, such information was recorded in the general diary of the police station and thereafter the matter was endorsed to Sri Prabal Deb, a Sub-Inspector of police of Kakraban police station to report the matter to the jurisdictional Magistrate and seek permission for investigation in terms of sub-Section (2) & (3) of Section 155, Cr. P.C. After such permission was accorded to him, the investigating officer visited the alleged place of occurrence at Kushamara and noticed that some chairs were lying broken where the programme was allegedly organised. He seized those broken chairs from the place of occurrence, examined the material witnesses and thereafter submitted KKB PS prosecution report No.2525 of 2015 under Sections 427, 506 IPC against the accused respondents in the Court of the jurisdictional Chief Judicial Magistrate. Learned Chief Judicial Magistrate having perused the prosecution report took cognizable offence punishable under Sections 427 and 506 IPC against the respondents and summoned them to appear before the Court.

[4] After they appeared in Court, the substance of accusation was read over and explained to the respondents by the learned Chief Judicial Magistrate in terms of Section 251 Cr. P.C. Both pleaded not guilty and claimed a trial.

[5] During trial, six witnesses were examined and two documents (Exbt.1 and Exbt.2) were adduced on behalf of the prosecution. This apart, four chairs allegedly damaged by the respondents during commission of the offence were also exhibited as Exhibit M.O-1.

[6] After the recording of prosecution evidence was over, the incriminating materials appearing against the respondents were read over and explained to them by the learned trial Judge. Both of them pleaded innocence and claimed that the charges were foisted on them. They were given opportunity to adduce evidence on their defence. But, both declined to adduce any evidence on their defence.

[7] On appreciation of evidence and the submissions made on behalf of the parties the learned trial Court found that the offence was not proved beyond reasonable shadow of doubt against the respondents and consequently he acquitted both of them of the charges brought against them. In appeal, the learned Additional Sessions Judge re-assessed the entire evidence and after hearing the arguments of leaned counsel representing the parties, he found no merit in the appeal and accordingly upheld the judgment and order of acquittal passed by the Ld. trial judge. Hence, this criminal revision petition.

[8] I have heard Mr. Pranabashis Majumder, learned advocate appearing for the petitioner. It is argued by Mr. Majumder learned counsel that the complainant belonged to a different political party. As a

result, the respondents who belonged to CPI(M) party had a grudge against her. According to learned counsel, plenty of evidence was adduced by the prosecution to prove that the respondents assaulted the complainant and her associates, ransacked the furniture and other materials which were hired by the complainant from a local decorator to organise the programme and caused damage to those materials. Even, the chairs allegedly broken by the respondents were also seized from the place of occurrence. Further submission on behalf of the complainant is that the learned trial Court without appreciating such incriminating evidence available against the respondents arrived at an erroneous conclusion and acquitted the respondents of both the charges. Learned counsel therefore, urges the Court to set aside the judgment of the Courts below and pass an order of conviction against the respondents for the offence committed by them.

[9] Mr. D. K. Daschowdhury, learned counsel appearing for respondents No.1 and 2 argues that there is no error in the concurrent findings of the learned Courts below and therefore, the judgments of the trial Court and that of the appellate Court do not call for any interference in revision. According to Mr. Daschoudhury, learned counsel, the FIR lodged by the complainant contains contradictory statements. It is stated in the FIR that the programme continued from 1 pm to 6.30 pm. Elsewhere in her FIR, it is also asserted by the complainant that the two accused appeared at the site of the programme at 10 'O' clock in the

night and abused the participants of the programme which appears to be a serious contradiction and impeaches the credibility of her FIR Statement because there would be no participant at 10 pm since the programme was concluded at 6.30 pm. Further submission on behalf of the respondents is that evidently the case was filed against the respondents due to political rivalry and no evidence was adduced against them at the trial in support of the allegations. Learned counsel therefore, urges the Court for dismissing the revision petition.

[10] Mr. Ratan Datta, learned Public Prosecutor on the other hand fairly submits that an appropriate decision, as the Court may deem fit and proper, may be taken.

[11] Among the prosecution witnesses PW-1, Smt. Khushi Rani Das is the complainant. She has asserted in her examination-in-chief that during the programme the two accused appeared and scolded the participants. They also damaged few plastic chairs. Immediately she informed the police. Police came and seized the chairs which were damaged by the accused respondents. During trial the PW identified the seizure list which carried her signature (Exbt.-1). She also identified the accused respondents in the dock of the Court. In her cross-examination she categorically stated that she was not aware of the contents of her FIR. She admitted that she belonged to Congress(I) party whereas the two respondents belonged to CPI(M) party. It was suggested to her by

learned counsel of the accused that she prosecuted the respondents out of political rivalry and obviously she denied the suggestion.

[12] PW-2, Sri Manik Das is the son of the complainant (PW-1). In same tune, the PW told the Court at the trial that the two accused respondents came to the place of occurrence during the function and damaged 3/4 chairs of the audience. After the matter was reported to police, they came and seized those chairs.

The PW was also subjected to cross-examination. He stated in his cross-examination that he was not aware of the contents of the seizure list. He also denied the suggestion of the accused that the case was filed by her mother against the accused persons out of political rivalry.

[13] PW-3, Sri Sanjib Ghosh is a neighbour of the complainant. He stated in his examination-in-chief that he supplied the plastic chairs to the complainant on rent for the function which was organised near the house of the complainant on 16.06.2015. In the evening, when the PW was piling up the chairs for transportation, respondent Dhirendra Das appeared and started hitting a chair with another chair. As a result, few chairs got damaged. He did not support the allegations of the complainant that the respondents abused her with filthy words.

[14] PW-4, Sri Indrajit Das is also a neighbour of the complainant who stated in his examination in chief that he heard the accused

respondents using abusive words and damaging the chairs at the place of occurrence. PW-5, Sri Bibhash Kashari, another neighbour of the complainant turned hostile during his examination-in-chief. As a result, he was cross-examined on behalf of the prosecution. But from such cross-examination nothing could be extracted from him in support of the prosecution case. In his cross-examination by the accused he stated that he was not aware as to whether there was any political rivalry between the parties.

[15] PW-6, Sri Prabal Deb submitted prosecution report in the case. He simply stated that he seized the chairs which were allegedly damaged by the respondents and prepared seizure list in presence of witnesses. In his cross-examination it was suggested to him that he did not record the statement of witnesses because the witnesses did not support the prosecution case. It was denied by the PW.

[16] As noted, the accused respondents allegedly committed offence punishable under Sections 427 and 506 IPC. Section 427 provides punishment for commission of mischief. Mischief is defined under Section 425 IPC which reads as under:

> ***"425. Mischief.—Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or***

diminishes its value or utility, or affects it injuriously, commits "mischief".

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly."

Section 427 which punishes mischief contemplates that mischief shall be punishable when the accused by such mischief causes loss or damage to the amount of fifty rupees or upwards. The decorator from whom the complainant brought the chairs on rent while deposing as PW-3 simply stated that he found one of the accused respondents hitting the chairs with another chair. As a result of which few chairs were damaged. But the PW did not say anything about the nature and extent of damage. Evidence available on record is not enough to hold that the respondents by their acts, caused any wrongful loss or damage to the chairs of PW-3. Moreover, there is no evidence to draw the inference that by the alleged act the respondents caused loss or damage to the amount of fifty rupees or upwards to bring the act within the purview of Section 427 IPC. With regard to their acquittal from Section 506 IPC, the Courts below held that there was no evidence to implicate them in the said offence. Section 506 IPC provides punishment for criminal intimidation.

Criminal intimidation is defined under Section 503 IPC which reads as under:

> ***"503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.***
>
> ***Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."***

[17] There is no iota of evidence that the respondents subjected the complainant to criminal intimidation in any manner whatsoever. Only allegation against the respondents is that they used abusive words towards the complainant. But exactly what they said is not found anywhere in evidence.

[18] While discussing the ambit of power of the High Court in revisional jurisdiction under Section 401 Cr.P.C, the Apex Court in ***Vimal Singh Vs. Khuman Singh & Anr.*** reported in ***(1998) 7 SCC 223*** held that the High Court in its revisional power does not ordinarily interfere with the judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. Observation of the Apex Court in the said judgment in this regard is as follows:

> ***"9. Coming to the ambit of power of High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgment of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue have been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 403 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial……."***

[19] Having carefully gone through entire evidence as discussed above and keeping in view the provisions of law involved in the case and the observation of the Apex Court in the judgment cited above, this Court is of the considered view that the Courts below rightly arrived at the conclusion on a proper appreciation of evidence. There is no reason to

interfere with the impugned judgment dated 13.07.2017 passed by the learned Additional Sessions Judge, Gomati Judicial District, Udaipur in Case No. Criminal Appeal 20(02) of 2016. Consequently, the criminal revision petition stands dismissed. Respondents are on bail. Their bail bonds stand discharged.

Send back the LCR along with a copy of the judgment.

HIGH COURT OF TRIPURA

JUDGE

सत्यमेव जयते

Dipankar