

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE No.96 OF 2013

ORDER:

This Criminal Revision Case is preferred by the petitioner-complainant aggrieved by the order in Crl.A. No.52 of 2011, dated 19.10.2012 passed by the V Additional Sessions Judge, Karimnagar, confirming the order in CC No.17 of 2008 on the file of the Special Judicial Magistrate of First class (Excise), Karimnagar in acquitting the respondent-accused for the offences under Sections 448, 427 and 506 read with 34 IPC.

2. The parties are hereinafter referred as per their array before the trial court.

3. The case of the prosecution in brief was that on 11.04.2004 at about 11.30 PM, the petitioner-complainant (PW.1) came to the police station II- Town Karimnagar and lodged a written complaint stating that she was having an extent of 726 sq. yds., of land at Vidyanagar locality and constructed two rooms in the said land which were covered with iron sheet and also constructed a compound wall. The Municipal authorities gave house number as 10-3-345/A. There

was a dispute between her and the accused. As per the status quo order issued by this Court in CMP No.2462 of 2003, CMOP No.2194 of 2003, she was in possession and enjoyment of the said property. On 11.04.2004 at 3.00 PM she went to attend a function in her relatives' house. Her mother Sujatha (PW.2) was in the house at that time. At about 4.00 PM when she returned home, found that all the accused criminally trespassed into her house and destroyed the electricity meter, gas cylinder and other materials. On seeing the incident, she and her mother tried to restrain them, but they threatened to kill them. The said incident was also witnessed by their neighbor Nareddy Sudhakar Reddy and all the accused caused damage to a tune of Rs.50,000/-. Basing on the said report, the police registered a case in Crime No.128 of 2004 against A1 to A9 for the offences under Sections 448, 427 and 506 read with 34 IPC and on completion of investigation filed charge sheet against A1 to A9 for the above offences.

4. The Special Judicial magistrate of First Class (Excise), Karimnagar conducted trial of the case. During the course of trial, the

prosecution examined PWs.1 to 7 and got marked Exs.P1 to P13. No defence evidence was adduced.

5. On considering the oral and documentary evidence on record, the trial court found the accused not guilty for the offences under Sections 448, 427 and 506 read with 34 IPC and acquitted them.

6. Aggrieved by the said acquittal of the accused, the complainant preferred an appeal. The appeal was heard by the V Additional Sessions Judge, Karimnagar vide Crl.A. No.52 of 2011 dated 19.10.2012 and the appellate court also confirmed the acquittal recorded by the trial court and dismissed the appeal.

7. Aggrieved further, the complainant preferred this revision contending that the courts below failed to see that the ingredients to constitute the offences under Sections 448, 427, 506 read with 34 IPC were made out by the prosecution. Learned judges erred in not considering Ex.P3 orders in the contempt case. The learned judges ought to have seen that the accused had admitted their guilt of having entered into the property. No valid and convincing reasons were given by the courts below for not discussing about Exs.P3 and P4

which would go to the root of the prosecution. The courts below erred in rejecting the prosecution case by relying on minor contradictions in the evidence of Pws.1 and 2. The courts below erred in rejecting the evidence of PW.3 due to his declaring hostile. The evidence of the hostile witness also could be considered when there was corroboration to his evidence by the evidence of other witnesses and prayed to set aside the orders of the courts below.

8. Heard learned counsel for the petitioner-complainant, the learned counsel for the respondents-accused Nos.1 to 8 and the learned Public Prosecutor.

9. It is settled legal proposition that if the courts below have recorded the finding of fact, the question of re-appreciation of evidence by the third court does not arise unless it is found to be totally perverse. The higher court does not sit as a regular court of appeal. Its function is to ensure that law is being properly administered. Such a court cannot embark upon fruitless task of determining the issues by re-appreciating the evidence. In the present case, both the trial court as well as the appellate court arrived at

concurrent factual findings that the accused persons were not guilty of the offences with which they were charged.

10. The contention of the complainant was that the orders in contempt case marked under Ex.P.3 would show that the relevant sections in IPC were made out by the prosecution. But, the Contempt Case No.626 of 2004 was closed by this Court on accepting the unconditional apology tendered by the respondents therein. The observations of this Court therein cannot be considered as proof of the offences charged against the accused. Admittedly, there was a civil dispute between the parties and the second appeal preferred by the complainant *vide* SA No.983 of 2002 is pending before this court. In CC No.626 of 2004, this Court observed that:

“As can be gathered from these facts, both the parties are claiming possession and enjoyment of the suit schedule property. What I could gather from the rival pleadings of the parties is that, the petitioner was in possession and enjoyments and raised walls. Be that is so, it is too early to give a finding as to who was in possession and enjoyment of the suit schedule property. For the purpose of adjudicating this contempt, suffice it to accept the unconditional apology tendered by the respondents. Therefore, after accepting the unconditional apology, the contempt case is closed and the petitioner is directed not to raise any further construction in the suit schedule property till disposal of the Second Appeal. The respondents are also directed not to interfere with the possession and

enjoyment of the suit schedule property by the petitioner.”

11. These observations cannot be considered as proof of possession of the complainant and that the accused committed offences of criminal trespass, mischief and criminal intimidation against the complainant. As both the courts below, acquitted the accused considering the inconsistent evidence of the prosecution witnesses and PW.3 turning hostile, this court does not find any merit in this revision to set aside the orders of the courts below.

12. In the result, the Criminal Revision Case is dismissed confirming the judgment dated 19.10.2012 passed in Crl.A. No.52 of 2011 by the V Additional Sessions Judge, Karimnagar.

Pending miscellaneous petitions, if any, shall stand closed.

Dr. G. RADHA RANI, J

September 26, 2022
KTL