

(2011) 11 KAR CK 0025

In the Karnataka High Court

Case No : Criminal Revision Petition No. 1124 of 2011

C.P. Bharatha, Geetha and Kamalamma

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 23-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397 (1), 401
Probation of Offenders Act, 1958 — Section 3, 4

Citation : (2011) 11 KAR CK 0025

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : K.L. Sreenivas and Sri O.K. Harisha, for the Appellant;

Final Decision : Dismissed

Judgement

Hon"ble Mr Justice D.V. Shylendra Kumar

1. This criminal revision petition u/s 397(1) read with Section 401 of Code of Criminal Procedure. 1908 (CrPC) by the accused persons in CC No 243 of 2006, on the file of Civil Judge (Jr Dn) and JMFC. Pandavapura, who had been found guilty of the offences charged and sentenced them as under:

2. This judgment of conviction while had been affirmed in appeal in Crl Appeal No 71 of 2010, on the file of presiding officer. Fast Track Court, Srirangapatna, and release of first accused under Sections 3 and 4 of Probation of Offenders Act, 1958, (for short, the Act) was confirmed, the sentence that had been passed by the trial court on accused 2 and 3 was modified as under:

The sentence as passed against the accused Nos. 2 and 3 is modified as follows:

The accused Nos. 2 and. 3 are sentenced to pay a fine of Rs. 500/- each and in default to undergo simple imprisonment for a period of 15 days for the offence punishable under Sec, 323 R/w. Sec 34 of IPC.

Further the accused Nos.2 and 3 are sentenced- to undergo simple imprisonment

for 6 months and to pay a. fine of Rs. 1,000/- each and in default to undergo simple imprisonment for one month for the offence punishable under Sec. 325 R/w. Sec. 34 of IPC.

3. It is against this nature of affirming judgment, but. reducing the sentence, the present; revision petition by all the accused.

4. Sri K L Sreenivas, learned counsel for the appellants-accused has urged many grounds, particularly by pointing out the discrepancies in the prosecution evidence that the wound certificate ExP3 while had mentioned the time of examination of the injured PW2 as at 8.00 am on 3-6-2006, the prosecution case is that the incident itself took place at 5.00 pm on the very day and therefore the prosecution case itself is not believable and the conviction and sentence requires to be set aside.

5. Learned counsel for the appellants has also urged that accused 2 and 3 are being women, the matter should have been dealt leniently and at. any rate they also should have been extended the benefit of the provisions of the Act.

6. The discrepancy of mentioning the date in the wound certificate has been clarified during the cross-examination by the doctor PW4 as by mistake and even otherwise. I am of the opinion, it is not fatal to the prosecution case, having regard to the evidence on record and that having been examined by the trial court and the lower appellate court.

7. In so far as the submission regarding extension of benefit of the provisions of the Act in favour of accused 2 and 3 on the premise that they are women, while this is a benefit which has to be primarily extended by the trial court while imposing sentence and at the best would have been examined by the appellate court, whose powers are coextensive, I do not find any need or necessity to exercise such power in revisional jurisdiction, as while the power u/s 3 of the Act not applicable to the facts of present case, Section 413 essentially to be exercised by the trial court and not by revisional court, I do not find any need or justification to exercise such power.

8. No need or scope for interference in exercise of revisional jurisdiction u/s 397(1) CrPC. Revision petition dismissed.