

(2013) 07 KAR CK 0123

In the Karnataka High Court

Case No : Criminal Revision Petition No. 1200 of 2009

Somashekara @ Papa and Venkatesh

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 353, 379, 506

Citation : (2013) 07 KAR CK 0123

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : H.S. Chandramouli, for the Appellant; G.M. Sreenivasa Reddy, HCGP, for the Respondent

Final Decision : Partly Allowed

Judgement

H.N. Nagamohan Das, J.—This revision petition is directed against the judgment dated 01.07.2008 in C.C. No. 43/2007 passed by the Civil Judge (Junior Division) and JMFC at Hunsur and confirmed by the judgment dated 16.11.2009 in Criminal Appeal No. 154/2008 passed by the Fast Track Court at Hunsur convicting the petitioners for the offences punishable u/s 353, 379, 506 read with Section 34 IPC. Petitioners are also sentenced to undergo simple imprisonment for a period of 3 months and to pay fine of Rs. 500/- for the offences punishable u/s 353 and 379 IPC. For the offences punishable u/s 506, simple imprisonment of a term of 3 months and to pay fine of Rs. 500/-. On 14.06.2005 the employees of Forest Department at Hunsur range noticed that petitioners and two others have illegally entered the forest area and cut 25 Eucalyptus trees. The forest employees apprehended accused No. 4 and when they were bringing him to the forest office, accused Nos. 2 and 3 threatened weapons and with dire consequences to their life and got released accused No. 4 and took him away. On the basis of these averments a complaint was lodged with the respondent-police and the same came to be registered in crime No. 114/2005 for the offences punishable u/s 353, 379, 506 read with Section 34

IPC. After completion of investigation a charge sheet was filed in C.C. No. 43/2007. After framing the charges the prosecution examined 8 witnesses as P.W. 1 to P.W. 8 and got marked Ex. P. 1 to Ex. P. 6 and M.O. 1 and M.O. 2. On appreciation of the oral and documentary evidence the trial Court held that the charges leveled against the petitioners as proved. Consequently under the impugned judgment the trial Court convicted the accused and sentenced them. It is noticed from the record that accused No. 3 died during the pendency of the proceedings before the trial Court. Accused No. 4 has not filed any appeal. These two petitioners who are accused Nos. 1 and 2, being aggrieved by the judgment of conviction and sentence of the trial Court, filed an appeal in Crl. A. No. 154/2008 on the file of the Fast Track Court, Hunsur. The lower appellate Court on re-appreciation of the entire evidence on record passed the impugned judgment confirming the judgment of the trial Court. Hence, this revision petition.

2. Heard arguments on both the side and perused the entire writ papers.

3. P.W. 1, P.W. 2 and P.W. 3 are the eye witnesses. These 3 witnesses in their evidence specifically stated that petitioners illegally entered the forest area and have cut 25 Eucalyptus trees. M.O. 1 is the sickle and M.O. 2 are the Eucalyptus trees. In the cross-examination of these witnesses nothing is elicited to disbelieve their version. Though learned counsel for the petitioners contends that petitioners have cut and removed the Eucalypts trees from their patta land, no evidence is placed on record in support of this contention. Not even a suggestion in this regard to P.W. 1 to P.W. 3. In the circumstances both the Courts below concurrently held that the petitioners illegally entered the forest area, cut and tried to remove 25 Eucalyptus trees belonging to the forest department. This concurrent finding of both the Courts below is supported by evidence on record and I find no justifiable ground to interfere with the same.

4. For the offences punishable u/s 353, 379, 506 read with Section 34 IPC the petitioners are sentenced to undergo 3 months imprisonment and to pay fine. Ex. P. 6 is the certificate issued by the forest officials specifying that the total value of 25 Eucalyptus trees at Rs. 4,500/-. Further it is seen that on the date of incident the petitioners were aged about 28 years and 30 years. Petitioners are married and having children and they are the sole bread earners in the family. In the circumstances I am of the considered opinion that the sentence levied by the Courts below appears to be on the higher side. Having regard to the facts and circumstances of this case, in the ends of justice, while confirming the conviction, the petitioners are to be levied fine. Further, it is seen that the petitioners have already undergone imprisonment for 18 days. For the reasons stated above, the following;

ORDER

i. Petition is allowed in part.

ii. The impugned judgment dated 01.07.2008 in C.C. No. 43/2007 passed by the Civil Judge (Junior Division) and JMFC at Hunsur and confirmed by the judgment

dated 16.11.2009 in Criminal Appeal No. 154/2008 passed by the Fast Track Court at Hunsur convicting the petitioners for the offences punishable u/s 353, 379, 506 read with Section 34 IPC are hereby confirmed.

iii. The impugned order of sentence sentencing the petitioners to undergo simple imprisonment for 3 months for the offences referred to above is hereby set aside.

iv. The petitioners are levied fine of Rs. 5,000/- each for the offences punishable u/s 353, 379 and 503 read with Section 34 IPC.

v. Petitioners shall pay the fine after deducting the fine amount already deposited.

vi. In default to pay the balance fine amount, the petitioners shall undergo simple imprisonment for a term of fifteen days.