IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE S RACHAIAH

CRIMINAL REVISION PETITION NO. 1447 OF 2016

BETWEEN:

SRI B. H. BYREGOWDA
S/O HOMBALEGOWDA,
AGED ABOUT 37 YEARS,
R/AT. BHOOGATHAHALLI VILLAGE,
T.NARASIPURA TALUK
MYSORE DISTRICT-571124

...PETITIONER

(BY SRI. M. M. SWAMY, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
NARASIMHARAJA TRAFFIC POLICE STATION,
MYSURU,
REP BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE-560001

...RESPONDENT

(BY SRI K. NAGESHWARAPPA, HCGP)

Digitally signed by RENUKA
Location: HIGH COURT OF KARNATAKA

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 17.10.2016 PASSED IN CRL.A.NO.134/2016 MADE BY THE III ADDL. SESSIONS JUDGE, MYSURU IN CONFIRMING THE JUDGMENTS DATED 11.07.2016 PASSED IN C.C.NO.277/2012 MADE BY THE III ADDL. SENIOR CIVIL JUDGE AND CHIEF JUDICIAL MAGISTRATE AT MYSURU AND ETC.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED ON 19.02.2025 COMING ON FOR PRONOUNCEMENT OF ORDER, THROUGH VIDEO CONFERENCING, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE S RACHAIAH

CAV ORDER

1. This Criminal Revision Petition is filed by the petitioner, being aggrieved by the judgment of conviction and order on sentence dated 11.07.2016 in C.C.No.277/2012 on the file of the III Addl. Senior Civil Judge and Chief Judicial Magistrate at Mysore and its confirmation judgment and order dated 17.10.2016 in Crl.A.No.134/2016 on the file of the Court of the III Addl. Sessions Judge, Mysuru has filed this revision petition seeking to set aside the concurrent findings recorded by the Courts below, wherein the petitioner / accused was convicted for the offences punishable under Sections 279, 337, 304(A) of IPC and Section 134(a) and (b) read with Section 187 of IMV Act.

2. The rank of the parties in the Trial Court will be considered henceforth for convenience.

Brief facts of the case:

3. It is the case of the prosecution that on 03.05.2008, early in the morning the accused was driving his goods auto bearing Reg.No.KA-11-4774 towards Mysore along with some inmates in the backside of the said goods auto. At about 7.00 am, when the goods auto reached ring road junction on Bangalore and Mysore High Way, a Lorry bearing Reg.No.KA-09-A-4049 came from Bannur Ring road with high speed and hit the goods auto on its left side in the middle of the goods auto and dashed the goods auto. Consequently, the goods auto turned turtle resulting in causing injuries to the inmates of the said auto. Smt. Kempamma and Smt.Bettamma succumbed to the said injuries. However, Smt.Masthamma survived after taking treatment. The first informant-driver of the goods auto escaped with minor injuries. Hence, he lodged a complaint before the respondent police. After conducting investigation, a charge sheet came to be submitted against the petitioner for the offences stated supra.

4. To prove the case, prosecution examined five witnesses as P.Ws.1 to 6 and got marked 10 documents as Ex.P1 to P10. The Trial Court after appreciating the oral and documentary evidence on record recorded the conviction for the aforesaid offences. Being aggrieved by the same, the accused approached the Appellate Court against the said judgment of conviction passed by the Trial Court. The Appellate Court dismissed the appeal by confirming the judgment of conviction passed by the Trial Court. Hence, this Revision Petition.

5. Heard Sri.M.M.Swamy, learned counsel for the petitioner and Sri.K.Nageshwarappa, learned High Court Government Pleader for the respondent.

6. It is the submission of learned counsel for the petitioner that the concurrent findings of the Courts below are not proper and contrary to the evidence on record. Therefore, the same is liable to be set aside.

7. It is further submitted that the place of occurrence even though is doubtful, the Trial Court has not considered the evidence of P.W.6 and Ex.P4-spot mahazar properly. PW6 being the Investigating Officer has stated that the

accident had occurred behind K.R.Mills Mysore. However, Ex.P4 mahazar would indicate that the accident took place at ring road junction which is very for away from K.R Mill.

8. It is further submitted that P.W.3 being an eye witness deposed in his evidence that the damages occurred on the right side of the auto. However, the report says the damages are occurred on the left side of the auto. The said inconsistency should have been considered by the Trial Court. However, the same has not been considered properly.

9. It is further submitted that none of the witnesses have spoken about the rash and negligent act of the petitioner. In the absence of the evidence regarding rash and negligent driving of the vehicle by the petitioner, conviction ought not to have been recorded. However, both the Courts have committed error in recording the conviction. Therefore, the same has to be set aside. As such, he prays to allow the petition.

10. Per contra, the learned High Court Government Pleader for the respondent justified the concurrent findings and

further he submitted that PW.3 being a driver of the auto and PW.4-Mastamma being an inmate of the said Auto have supported the case of the prosecution. It is also true that the accident occurred at the spot where the mahazar was drawn. There might have been some inconsistencies in the evidence of the eye witnesses. However, that may not be the major contradictions. Therefore, the findings of the Courts below in recording the conviction is proper and relevant. Interference with the said findings may not be proper. As such, he prays to dismiss the petition.

11. After having heard the learned counsel for the respective parties and also perused the findings of the Courts below in recording the conviction, it is relevant to refer the evidence of material witnesses, namely, PWs.3, 4 and also some documentary evidence.

12. No doubt, the accident had occurred and two women who were the inmates of the goods auto succumbed to the injuries. The fact remains that, who identified the driver of the lorry has to be looked into. The prosecution examined several witnesses to substantiate the same.

However, the owner of the lorry has not been examined. Further, none of the witnesses have spoken about the petitioner, who was driving the lorry. Even, PW.3 who was the driver of the goods auto has not identified the petitioner as a driver of the lorry. Such being the fact, recording the conviction based on the surmises and conjectures cannot be sustained. Therefore, I am of the considered opinion that both the Courts have committed error in recording the conviction. Hence, the said conviction has to be set aside.

13. In the light of the observations made above, I proceed to pass the following:

ORDER

i) The Criminal Revision Petition is allowed.

ii) The judgment of conviction and order on sentence dated 11.07.2016 passed in C.C.No.277/2012 by the Court of the III Addl. Senior Civil Judge and Chief Judicial Magistrate at Mysore and the judgment and order dated 17.10.2016 passed in Crl.A.No.134/2016 by the

Court of the III Addl. Sessions Judge at Mysuru, are set aside.

iii) The petitioner is acquitted for the offences under Sections 279, 337, 304(A) of IPC and Section 134(a) and (b) read with Section 187 of IMV Act.

iv) Bail bonds executed, if any, stand cancelled.

Sd/-
(S RACHAIAH)
JUDGE

JS
List No.: 19 Sl No.: 5