

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.1645 OF 2007

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ORDER:

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This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 28.11.2007, in CrI.A.No.110 of 2006 passed by the VII Additional District and Sessions Judge (Fast Track Court), Vijayawada, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Sections 406 and 420 IPC, vide judgment dated 04.07.2006 in C.C.No.761 of 2002 by the V Metropolitan Magistrate, Gannavaram, was confirmed.

2. The revision petitioner herein is the accused and respondent herein is the complainant in C.C.No.761 of 2002 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The brief facts of the case are that the accused is the partner of M/s Ravi Rice Mill, Katuru. On 23.12.1998 at 13:30 hours PW.6 and his staff raided M/s Vijaya Rice Mill, Katuru and seized the excess stock of paddy of 4.710 quintals worth about Rs.22,550/- rice of 1-625 quintals worth about Rs.16,250/- and rice brand of 304 quintals worth about Rs.1,000/- totalling to Rs.40,800/-. The said raid was conducted in the presence of PW.3 and accused. Later, PW.6 handed over the seized stock to the accused by obtaining proper acknowledgment. PW.6 registered a case against one Veeramachaneni Venkataratnam and another for having excess stock in Cr.No.142 of 1998 under Clause-3 of A.P.Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982, r/w Section 7 and 8 of Essential Commodities Act, 1955. The said seized stock was kept in M/s K.Ravi Rice Mill, Katuru in the custody of the accused. Subsequently the accused misused the said stock and leased out Ravi Rice Mill, Katuru to PW.5. The Vigilance Department conducted raid on Ravi Rice Mill, Katuru and as such PW.5 has withdrawn his leasehold rights in the said Rice Mill. After that, the said Rice Mill was closed. The Joint Collector, Krishna

directed PW.2 to take the seized stock from the accused and dispose of the same by conducting public auction and ordered to confiscate 50% of the stock. When PW.2 visited Ravi Rice Mill on 11.04.2000 found that the said Rice Mill was closed and it was confirmed that the seized stock was misappropriated by the accused. On 19.12.2001 PW.1 presented a report to PW.7 S.I. of Police Vuyyuru Rural Police Station, who registered the crime and investigated into the case. The Investigating Officer-PW.7 recorded the statements of the witnesses, inspected the scene of offence and filed the charge sheet against the accused for the offence punishable under Sections 406 and 420 IPC as the accused misappropriated stock worth Rs.40,800/- and pursuing it.

4. The learned V Metropolitan Magistrate, Gannavaram, took cognizance of the case and framed a charge for the offence punishable under Sections 406 and 420 IPC against the accused. During trial, to prove the case of the prosecution, PWs.1 to 6 were examined and Exs.P1 to P9 were marked.

5. After closure of the prosecution evidence, accused were examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and reported no oral or documentary evidence on his behalf.

6. The trial Court, after considering the evidence of PWs 1 to 6 and the documentary evidence Exs.P.1 to P.9, held that the accused is found guilty for the offence punishable under Section 406 IPC and he is convicted and sentenced to suffer rigorous imprisonment for one year and he is acquitted for the offence punishable under Section 420 IPC.

7. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.110 of 2006 before the VII Additional District & Sessions Judge (FTC-II), Vijayawada, where the appellate Court, after considering the evidence on record, confirmed the conviction and sentence and dismissed the appeal.

8. Aggrieved by the judgment of the VII Additional District and Sessions Judge (FTC), Vijayawada, the revision petitioner filed the present revision.

9. Learned counsel appearing for the revision petitioner/ argued that the petitioner is old person and a lenient view may be taken in view

of his health.

10. On the other hand, the learned Public Prosecutor argued that by examining PWs 1 to 6 and by marking Exs.P.1 to P.9 the prosecution able to prove that the stock entrusted to the accused were misused by him and misappropriated the same. The evidence of PWs 1 to 7 clearly establish the ingredients of Section 406 IPC and the trial Court rightly convicted the accused and acquitted as the charge under Section 420 IPC has not proved and finally prayed the Court that the concurrent findings of both the Courts needs no interference and prayed the Court to dismiss the revision.

11. Now, the point for determination is --

Whether the petitioner is entitled to set aside the concurrent findings of the appellate Court judgment in Crl.A.No.110 of 2006 passed by the VII Additional District and Sessions Judge (Fast Track Court), Vijayawada, as prayed for?

12. **POINT:**

A perusal of the evidence produced by the prosecution shows that PWs.1 to 6 clearly stated in their evidence that the property seized by the Vigilance Officer was entrusted to the accused and when accused was asked to produce the seized stock which was given to him for safe custody by PW.6 under Exs.P.5 and P.6 the accused failed to produce the same. Therefore, PW.1 presented Ex.P.1 report on 19.12.2001. It is not disputed by the revision petitioner that Exs.P.5 and P.6 panchnama and acknowledgment were not obtained from him and they are not belong to him and no suggestion was given to the prosecution witness that Exs.P.5 and P.6 do not bear his signatures. The prosecution proved that PW.6 entrusted the seized stock of paddy to the accused for safe custody under Exs.P.5 and P.6 by PW.1 and when the petitioner-accused failed to produce the seized stock before the Vigilance Officer the case was registered against him. At the time of seizure, Exs.P.5 and P.6 were executed which bear the signature of the accused. Therefore, considering the evidence of PWs.1 to 7 the trial Court as well as the appellate Court held that accused is guilty for the offence under Section 406 IPC and convicted him for the same.

13. The contention of the learned counsel for the petitioner is that though there

is concurrent findings of both the Courts, the petitioner is an old age person and prayed the Court to take a lenient view.

14. Considering the facts and circumstances of the case, I am of the view that a lenient view shall be taken in favour of the revision petitioner. In the circumstances, the conviction imposed against the accused is confirmed by reducing the sentence of imprisonment to six months simple imprisonment from rigorous imprisonment of one year. The sentence of fine is unaltered. The period of imprisonment already suffered by the revision petitioner is directed to be given set off.

15. Accordingly, the Criminal Revision Case is disposed of.

16. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date:30.03.2015

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