

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.937 OF 2008

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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 petitioners herein challenging the judgment dated 20.06.2008, passed in CrI.A.No.33 of 2006 by the District and Sessions Judge, Chittoor, whereunder and whereby the conviction and sentence passed against the revision petitioners herein for the offence punishable under Section 411 IPC, vide judgment dated 30.01.2006 in C.C.No.322 of 2005 by the V Additional Judicial Magistrate of First Class, Chittoor, was confirmed.

2. The revision petitioners herein are the accused and respondent herein is the complainant in C.C.No.322 of 2005 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 on 28.07.2005 and 30.07.2005 some unknown offenders gained entry into the house bearing D.No.15-2708, Balaji Nagar by breaking the lock of the main door and committed theft of gold jewels and silver ornaments all worth about Rs.10,000/-. PW.1 lodged a complaint on 30.07.2005 at 1:00 P.M. and upon the said complaint, a case was registered in Cr.No.260 of 2005 under Sections 457 & 380 IPC. During the course of investigation, the Investigating Officer recorded the statements of all the witnesses and on 05.08.2005 at 5:00 A.M. the accused were arrested and found having possession of gold jewels and in the presence of mediators jewellery was recovered from the possession of the accused/petitioners. After completing investigation, the Investigating Officer filed the charge sheet against the petitioners/accused for the offences punishable under Sections 457 and 380 or 411 IPC.

4. The learned V Additional Judicial Magistrate of First Class, Chittoor, took

cognizance of the case and framed a charge for the offence punishable under Section 411 IPC against the accused. During trial, to prove the case of prosecution, PWs.1 to 4 were examined and Exs.P1 to P5 and Mos 1 to 4 were marked.

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

6. The trial Court, after hearing the arguments and after perusing the record, convicted the accused Nos.1 and 2 for the offence punishable under Section 411 IPC and sentenced them to undergo Rigorous Imprisonment for a period of two years each and to pay a fine of Rs.500/- each, and in default of payment of fine, to undergo Simple Imprisonment for a period of one month each.

7. Aggrieved by the conviction and sentence passed by the trial Court, accused Nos.1 and 2 preferred Criminal Appeal No.33 of 2006 before the District and Sessions Judge, Chittoor, where the Appellate Court after considering the evidence on record confirmed the conviction and sentence and dismissed the appeal.

8. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.33 of 2006, the accused preferred the present revision case.

9. Learned counsel appearing for the revision petitioners/ accused argued that the prosecution failed to prove that accused were having stolen property in their possession and failed to conduct any test identification parade. Further, no property was recovered from the petitioners and finally prayed the Court to take lenient view.

10. On the other hand, the learned Public Prosecutor appearing for the State argued that both the Courts rightly held that the petitioners/accused were in possession of stolen property. Therefore, both the Courts rightly convicted the accused for the offence under Section 411 IPC and concurrent findings needs no interference and prayed the Court to dismiss the revision.

11. Now, the point for determination is --

Whether the prosecution could bring home the guilt of the accused for the offence punishable under Section 411 IPC, with which they are charged?

12. **POINT:**

A perusal of evidence of PWs 1 to 3 shows that on 28.07.2005 and 30.07.2005 some unknown persons gained entry into the house of PW.1 and committed theft of gold, silver and other valuables. The police registered the case in Cr.No.260 of 2005. As per the evidence of Investigating Officer, on 05.08.2005, he arrested the accused and found the stolen articles with them. The trial Court as well as the appellate Court clearly found that the petitioners/accused were guilty basing on the evidence of PWs 1 to 3 and 4 and recovery of MOs 1 to 4, police arrested the accused and same were seized under the cover of panchnama. Believing the evidence of PWs 1 to 4, the trial Court as well as the appellate Court held that the accused committed the offence under Section 411 IPC. Therefore, findings of the trial Court as well as the appellate Court needs no interference regarding the conviction of petitioners under Section 411 IPC.

13. The learned counsel for the petitioners argued that petitioners are innocents and they were implicated by the police though the valuables were not recovered from them and finally prayed the Court to take 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 petitioners. In the circumstances, the conviction imposed against the accused is confirmed but the sentence of imprisonment of two years is reduced to one year. However, the sentence of fine imposed against the accused is confirmed. The period of imprisonment already suffered by the revision petitioners 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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