

**HON'BLE SMT JUSTICE ANIS**  
**CRIMINAL REVISION CASE No.321 OF 2008**

**O R D E R:**

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 08.02.2008, passed by the I Additional District & Sessions Judge, Vizianagaram, in Criminal Appeal No.81 of 2003, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 411 of the Indian Penal Code, 1860 (for short, 'I.P.C') vide the judgment dated 03.07.2003 in C.C.No.36 of 2002 by the Additional Judicial Magistrate of First Class, Vizianagaram, is confirmed.

2. The revision petitioner herein is the accused, whereas respondent is the complainant in C.C.No.36 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 case of prosecution is that PW.2, who is the *de facto* complainant, gave a complaint to the police, I Town Police Station, Vizianagaram, stating that on 06/07.01.2002 at 02:00 hours, some unknown offenders committed theft of his blue colour Hero Honda Passion motorcycle, while it was parked in front of Polyester House Shop of Vizianagaram. The watchman of the said shop-PW.1 informed about the theft of the vehicle to him. After receiving the complaint, police registered the case in Cr.No.3 of 2002 for the offence punishable under Section 379 I.P.C and during the course of investigation, recorded the statements of PWs.1 to 3. Thereafter, on 11.01.2002 at 01:30 p.m, the police arrested the accused and also seized the stolen motorcycle from his possession in the presence of mediators, at the outskirts of Dharmapuri, Vizianagaram. While

investigating the said crime, the accused confessed about committing the offence along with another offence in Cr.No.21 of 2001 and the police also recovered another motorcycle from the mechanic shop of PW.3 in that crime. After completing the investigation, police filed the charge sheet against the accused into the Court for the offence punishable under Section 379 or 411 I.P.C.

4. The learned Additional Judicial Magistrate of First Class, Vizianagaram, took cognizance of the case and framed a charge for the offences punishable under Sections 379 or 411 I.P.C against the accused. During trial, on behalf of prosecution, PWs.1 to 5 were examined and Exs.P1 to P5 were got marked.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C, putting the incriminatory material deposed against him. The Accused denied the same and reported no oral or documentary evidence on his behalf. After hearing the arguments and after perusing the record, the learned Magistrate convicted the accused for the offence punishable under Section 411 I.P.C and sentenced him to undergo Rigorous Imprisonment for a period of six months.

6. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.81 of 2003 before the Additional District & Sessions Judge, Vizianagaram, where the appellate Court after considering the oral and documentary evidence, after hearing both sides and after perusing the findings of the trial Court, held that accused is habituated to commit the theft of motorcycles and dismissed the appeal by confirming the conviction and sentence passed by the trial Court.

7. Being aggrieved by the concurrent finding of both the Courts below, passed in Criminal Appeal No.81 of 2003 and C.C.No.36 of 2002, accused preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/accused argued that there are no independent witnesses to show that the accused had committed the offence; that PWs.1 to 5 are the interested witnesses and the trial Court rightly acquitted the accused for the offence punishable under Section 379 I.P.C, and therefore, the question of punishing the accused for the offence punishable under Section 411 I.P.C also does not arise; that Ex.P2 is not admissible in evidence as the entire report was marked; that no independent mediator was examined and the mediator, who was examined is the servant of the *de facto* complainant; that the evidence of PWs.4 & 5 are contradictory in nature; that there is no evidence on record to show that accused is a habitual offender and there is no legal evidence to prove the same; that both the Courts committed an error in holding that the accused committed the offence; that accused is innocent and basing on assumptions and presumptions, the accused was convicted; and that the recovery of the vehicle is doubtful and it is not proved by independent evidence and finally prayed the Court to allow the revision case.

9. On the other hand, the learned Public Prosecutor appearing for the State of Andhra Pradesh argued that the evidence of PWs.1 to 3 shows that the *de facto* complainant gave a complaint about the theft of his motorcycle; that the evidence of Investigating Officer and mediator-PW.4 shows that on 11.01.2002, they have arrested the accused and recovered the motorcycle belonging to the *de facto* complainant from his possession, in the presence of PW.4 and another witness by name Ramakrishna; that the evidence of PW.5-Investigating Officer further shows that accused was caught red handed, while he was travelling on the motorcycle belonging to the *de facto* complainant; that further marking of Ex.P2 is not fatal to the prosecution case; that the evidence of PW.5 clinchingly proved that the accused is a habitual offender, committed theft of another vehicle and

the same was recovered from the mechanical shed of PW.3, of which Cr.No.21 of 2001 was registered; that the evidence of PWs.4 & 5 cannot be brushed aside simply on the ground that there are some variations in their evidence; that the evidence on record clearly established that the accused is in possession of the motorcycle belonging to the *de facto* complainant, therefore both the trial Court and also appellate Court rightly held that the accused committed the offence punishable under Section 411 I.P.C and convicted the accused and the said finding needs no interference and prayed the Court to dismiss the revision case.

10. Now, the point for determination is --

Whether the revision petitioner herein is entitled to set aside the concurrent finding given by both the courts below for the offence punishable under Section 411 I.P.C, as prayed for or not?

11. **P O I N T**: A perusal of the evidence produced by the prosecution shows that on 07.01.2002, PW.1 gave a complaint to the police stating that he parked his new Hero Honda Passion motorcycle in front the Polyester House Shop of Vizianagaram and PW.1, who was working as watchman of the said shop, informed him about the theft of his motorcycle. A perusal of the evidence of PW.1 shows that he is working as watchman and on the date of incident at about 1:00 a.m, he went to Kanyakaparameswari temple to have tea and after he returned to shop, he found that the vehicle kept in the verandah was stolen; and that he informed the same to PW.2, who is the owner of the vehicle. After receiving the complaint, police registered the case in Cr.No.3 of 2002 and investigated the same under section 379 I.P.C. During the course of investigation, the Sub-Inspector of Police arrested the accused on 11.01.2002 at the outskirts of Dharmapuri, Vizianagaram at 01:30 p.m in the presence of PW.4 and one Ramakrishna. PW.5 is the Investigating Officer, who stated about the confession of the accused and recovery of MO.1. The mediator-PW.4 also supported the

prosecution case and he clearly stated that he was present at the time of arrest and seizure of MO.1 from the accused. As per the evidence of PW.4, it is clear that on 11.01.2002, the accused was arrested by the police near Padmavathinagar of Dharmapuri road. In his presence they seized MO.1-motorcycle under the cover of panchanama Ex.P2. PW.4 also stated that the accused also led the police and mediators to the mechanical shed at Dharmapuri road, where another motorcycle was also seized under the cover of Ex.P3 and himself and Ramakrishna signed on both Exs.P1 & P3.

12. The learned counsel for the revision petitioner/accused argued that the prosecution has not produced any independent witness to show that PW.4 is working under PW.2. There is no evidence on record to prove the said fact that the mediator is the servant of the *de facto* complainant-PW.2. The another contention of the revision petitioner is that Ex.P2 is not admissible. It contains the confessional statement of the accused. As per the evidence of PW.5, on 11.01.2002, he along with mediators and staff noticed that accused is coming from Dharmapuri road towards Vizianagaram on the Hero Honda motorcycle, which was stolen property in Cr.No.3 of 2002, which belongs to PW.2, and thus caught him red handed, while he was travelling on the motorcycle MO.1 belonging to PW.2. Therefore, the entire case of the prosecution cannot be thrown away on the simple ground that there are contradictions in the evidence of PWs.4 & 5. The learned counsel for the revision petitioner argued that accused is not a habitual offender. This contention of the learned counsel is not correct as there is another crime i.e., Cr.No.21 of 2001 registered against him. Further, a confession was made by the accused.

13. The evidence of PW.3 shows that the accused brought one motorcycle bearing No.9829 to him for repairs. PW.3 being a scooter mechanic, observed that the last digit in the registration number of the said motorcycle was changed into digit '7' and he entertained doubt

and stopped attending the repairs. The evidence of PW.3 clearly established that the accused used to bring the stolen vehicles for repairs to PW.3 and PW.3 identified the accused and handed over the vehicle bearing No.9829 to the police. Thus, the prosecution failed to prove the charge under Section 379 I.P.C against the accused and the trial Court as well as the appellate Court rightly gave a finding acquitting the accused for the said offence. But, as the accused failed to explain as to how he came to be in the possession of the vehicle and also failed to produce any record and the accused not owned the said vehicle, the prosecution able to prove the charge for the offence punishable under Section 411 I.P.C and therefore, both the trial Court as well as appellate Court rightly considered the evidence and gave a finding that accused is guilty of the charge under Section 411 I.P.C and the findings of the appellate Court in Criminal Appeal No.81 of 2003 and the trial Court in C.C.No.36 of 2002 needs no interference of this Court.

12. Regarding the quantum of sentence, the learned counsel for the revision petitioner/accused argued that a lenient view may be taken as the accused is of very young age having aged parents and as he is the only bread winner of his family. Thus, taking into consideration the facts and circumstances of the case, I am of the view that a lenient view shall be taken in favour of the accused by reducing the sentence of imprisonment to three months from six months. Therefore, I am inclined to dispose of the revision as under.

13. The conviction recorded against the revision petitioner/accused by the Additional Judicial Magistrate of First Class, Vizianagaram, in C.C.No.36 of 2002 for the offence punishable under Section 411 I.P.C as confirmed by the I Additional District & Sessions Judge, Vizianagaram in CrI.A.No.81 of 2003 is hereby confirmed. But, the sentence of imprisonment of six months imposed by both the Courts below is hereby modified and reduced to three months. The period of imprisonment already suffered by the revision petitioner/accused is

directed to be given set off.

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

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

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**ANIS, J**

Date: 10.03.2015

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