

THE HON'BLE MRS JUSTICE ANIS

CRIMINAL REVISION CASE No.694 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 sole accused challenging the judgment, dated 18.4.2008, passed in Criminal Appeal No.197 of 2007 on the file of the Special Judge for trial of offences under SCs & STs (POA) Act – cum – VI Additional Metropolitan Sessions Judge, Secunderabad, whereunder and whereby, the conviction passed against the revision petitioner herein/accused for the offence punishable under Section 379 I.P.C. vide judgment, dated 18.5.2007, in C.C.No.110 of 2007 passed by the XI Additional Chief Metropolitan Magistrate, Secunderabad, was confirmed with modification.

2. The revision petitioner herein is the accused and the respondent herein is the complainant in C.C.No.110 of 2007 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the said calendar case before the trial Court.

3. The case of the prosecution, in brief, is that on 13.8.2006, at about 16.30 hours, P.W.1 lodged a complaint stating that on 7.8.2006, at 10.00 hours, he parked his Hero Honda Splendor bearing No.AP 12 C 8686 in Wesley Degree College, Secunderabad and when he returned at 12.30 p.m., he found his vehicle missing. After receiving the complaint, the same was registered as a case in Crime No.224 of 2006 for the offence punishable under Section 379 I.P.C. During the course of investigation, on 23.1.2007, the accused was arrested by Saroor Nagar Police, Cyberabad in Crime No.57 of 2007 and recovered 17 motor cycles including the Hero Honda Splendor involved in this case. In pursuance of the confession of the accused, all the motor cycles were recovered from the house of the accused and from other places in the presence of panchas as material objects. The Investigating Officer, after completion of investigation, filed the charge sheet against the accused.

4. The learned XI Additional Chief Metropolitan Magistrate, Secunderabad took cognizance of the case for the offence punishable under Section 379 I.P.C. and framed the charge for the offence punishable under Section 379 I.P.C. against the accused.

5. During trial, to prove the case of the prosecution, PWs.1 to 5 were examined and Exs.P-1 to P-3 and M.O.1 were got marked.

6. After closure of the prosecution evidence, the accused was 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.

7. The trial Court, after considering the evidence of P.Ws.1 to 5 and Exs.P-1 to P-3 and M.O.1, convicted the accused for the offence punishable under Section 379 I.P.C. and accordingly, sentenced him to undergo rigorous imprisonment for a period of one year.

8. Aggrieved by the judgment, dated 18.5.2007, in C.C.No.110 of 2007, the accused preferred Criminal Appeal No.197 of 2007 before the Special Judge for trial of offences under S.Cs & STs (POA) Act – cum - VI Additional Metropolitan Sessions Judge, Secunderabad where the Appellate Court, after considering the evidence on record, dismissed the appeal on 18.3.2008 confirming the conviction of the trial Court. The appellate Court, at the request of the revision petitioner herein, took a lenient view and modified the sentence by reducing the sentence from one year to six months.

9. Being aggrieved by the judgment, 18.4.2008, of the Appellate Court passed in Criminal Appeal No.197 of 2007, the accused preferred the present revision case.

10. Learned counsel appearing for the revision petitioner/accused argued that there is a delay of 6 days in lodging the complaint by P.W.1 and he also failed to produce the ownership documents to the police; that there are contradictions in the evidence of P.Ws.2 and 4; that the prosecution is not able to prove the recovery of M.O.1; that Ex.P-2 - confessional – cum – seizure panchanama is inadmissible in evidence and the prosecution failed to file the original confession statement; that there are no

recovery proceedings; that the receivers of the vehicles were not examined and finally, he prayed the Court to allow the Criminal Revision Case.

11. On the other hand, the learned Public Prosecutor appearing for the State of Telangana argued that the revision petitioner is a habitual offender; that the petitioner was caught red handedly by the police and during the course of interrogation, he confessed about the committing of the offence; that 17 vehicles were recovered from the house of the accused; that as per his confession, the prosecution is able to explain the delay in filing Ex.P-1 - complaint on the ground that P.W.1, as a college student, after thorough check and search, gave a complaint to the police after six days; that already the appellate Court has taken a lenient view and hence, he prays the Court to dismiss this Revision Case.

12. Now, the point for determination is:

"Whether the revision petitioner herein is entitled to the relief of setting aside the judgment, dated 18.4.2008, passed in Criminal Appeal No.197 of 2007 on the file of the Special Judge for trial of offences under SCs & STs (POA) Act – cum – VI Additional Metropolitan Sessions Judge, Secunderabad, as prayed for or not?"

13. **POINT:** P.W.1, who is the *de facto* complainant, stated in his evidence that on 7.8.2006, when he parked his Hero Honda Splendor bearing No.AP 12 C 8686 in Wesley Degree College, it was found missing and as such, he lodged a complaint with the police under Ex.P-1 on 13.8.2006. The evidence of P.W.1 is not challenged by the accused in the cross examination. Therefore, his evidence is unrebutted.

14. P.W.2, who is a private employee at Adoni, was summoned by Saroornagar Police on 20.1.2007 and he stated in his evidence that the police interrogated the accused in the presence of himself and another; that the accused confessed about the theft of 17 two wheelers i.e., 16 Hero Honda Motor Cycles and one Bajaj Chetak pertaining to different police stations and also recovery of 17 motor cycles from his house at Mallikarjunanagar and that himself and his friend attested on seizure panchanama and seizure reports under Ex.P-2. Nothing has been elicited in the cross examination of P.W.2 to discredit his evidence.

15. P.W.3, who is the Police Constable working in Saroornagar Police Station, deposed that on 20.1.2007, himself and other police constables were on patrolling duty at Mohan Nagar, City Wines and they noticed the accused coming on a Hero Honda Motor Cycle bearing No.AP 28 AG 3840 and on suspicion, they stopped the accused and demanded the vehicle papers, but the accused failed to produce the papers and on the other hand, he tried to flee away from the said place; that they have detained the accused and produced him before P.W.4 - Sub Inspector of Police along with the said vehicle for further action.

16. P.W.4 – Sub Inspector of Police, Saroornagar Police Station also stated about the recoveries made as per the confession given by the accused. Thus, the evidence of P.Ws.2 and 4 corroborated with each other regarding the recovery of the motor cycles from the house of the accused. Though there are some minor discrepancies in the evidence of P.W.2, they are not fatal to the prosecution case.

17. P.W.5 - Investigating Officer received stolen property from P.W.4 and on P.T. warrant, he produced the accused and filed the charge sheet into the Court. According to him, no incriminating material was available at the scene of offence. Thus, from the evidence of P.Ws.1 to 5, the prosecution is able to prove that on 20.1.2007, the accused was caught red handedly by P.W.3 while going on a Hero Honda Motor Cycle bearing No.AP 28 AG 3840 without vehicle papers. On suspicion, when they enquired the accused, he confessed about the committing of the offence. In pursuance of his confession, in the presence of P.W.2 and other panch witness, 17 vehicles were seized from the accused including M.O.1. In the cross examination of witnesses, nothing has been elicited to disprove the evidence of P.Ws.1 to 5. Therefore, the prosecution is able to prove that the accused committed the offence punishable under Section 379 I.P.C. and both the Courts below gave concurrent findings that the charge under Section 379 I.P.C. is proved against the accused. Further, the appellate Court has already taken a lenient view and reduced the punishment from one year to six months and therefore, the revision petitioner is not entitled to further leniency, and hence, the Revision Case is liable to be dismissed.

18. Accordingly, the Criminal Revision Case is dismissed confirming the judgment,

dated 18.4.2008, passed in Criminal Appeal No.197 of 2007 on the file of the Special Judge for trial of offences under SCs & STs (POA) Act – cum – VI Additional Metropolitan Sessions Judge, Secunderabad.

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

JUSTICE ANIS

Date : 2.4.2015

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THE HON'BLE MRS JUSTICE ANIS

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Date : 2.4.2015

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