

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

FRIDAY, THE FIFTH DAY OF JUNE
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.47 of 2008

Between:

Nunna Prasanna Babu @ Pandu

..... PETITIONER/A1

AND

The State of A.P.rep.by its

Public Prosecutor

.....RESPONDENT

The Court made the following:

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.47 of 2008

ORDER:

This Criminal Revision Case is directed against the judgment in CrI.A.No.49/2006,

dated 11.01.2008 on the file of the Metropolitan Sessions Judge, Vijayawada at Krishna District, by and under which, the conviction and sentence as imposed by the trial Court was confirmed.

2. Heard the learned counsel appearing for the revision petitioner and the learned Additional Public Prosecutor, representing the State.

3. The case of the prosecution in brief is that on 31.03.2001 there was theft of CST-9 plates at the place in between Indupalli and Venktrapragada railway stations. On 14.04.2001 at about 4 a.m the railway police found 9 persons engaged in committing theft of CST-9 plates, they have surrounded, but 5 of them escaped and A1 to A4 were detained. A1 to A4 were found in possession of one CST-9 plate each and about 17 CST-9 plates were already loaded in a lorry. Panchanama was conducted and accused confessed about theft of CST-9 plates. A case in Cr.No.10/2001 was registered by the Inspector of Police, R.P.F, Vijayawada under Section 3(a) of R.P. (U.P) Act, 1966. Charge sheet was filed against 10 accused in the Court of the II Metropolitan Magistrate for Railways, Vijayawada.

4. The trial Court had taken the case on file for the offence alleged against all accused, and on appearance of the accused, they were examined under Sec.246(2) Cr.P.C and charge under Sec.3(a) of R.P.(U.P) Act, 1966 was framed, for which the accused pleaded not guilty and claim to be tried.

5. A10 died during pendency of the trial and the case against A10 was abated. The case against A9 was separated.

6. To bring home the guilt of the accused, the prosecution examined PWs 1 to 13 and got marked Exs.P1 to P52 and Mos 1 to 7 on its behalf. After closure of the prosecution evidence, A1 to A8 were examined under Section 313 Cr.P.C putting all incriminating material available against them, but A1 to A8 denied the material evidence.

7. On appreciation of oral and documentary evidence, the trial Court found A1 to A6 guilty of the offence alleged, convicted and sentenced each one to undergo rigorous imprisonment for six months, and found A7 and A8 not guilty for the offence alleged and acquitted them.

8. A1 and A2 challenged the conviction and sentence passed by the trial Court in

CrI.A.49/2006. During pendency of the appeal, the 2nd appellant/A2 died and hence the case against him was abated. The criminal appeal was disposed of only against A1 and the same was dismissed confirming the judgment of the trial Court. Aggrieved by the same, the present criminal revision case is filed by the petitioner/A1.

9. Now the point that arises for consideration in this revision is whether the conviction and sentence imposed by the Courts below against the revision petitioner/A1 is legal and sustainable.

Point:

10. The contention of the learned counsel appearing for the revision petitioner/A1 is that there is no evidence whatsoever to connect the property recovered as belonging to the railways and in the absence of any evidence, the revision petitioner/A1 cannot be held to have committed the offence alleged. The learned counsel further submits that merely on the basis of the evidence of PW 5, both the Courts below came to the conclusion that the property recovered was the railway property and erroneously convicted the petitioner/A1.

11. On the other hand, the learned Additional Public Prosecutor submits that the prosecution has placed voluminous oral and documentary evidence on record, which clearly establishes that the revision petitioner/A1 along with others were found red-handed in possession of the stolen railway property, therefore, both the Courts below have concurrently found the revision petitioner/A1 and other accused guilty of the offence alleged and convicted and sentenced them, as stated supra. The learned Additional Public Prosecutor submits that the judgments of the Courts below are based on proper appreciation of material on record, which do not warrant any interference.

12. The entire evidence on record both oral and documentary, so also the judgments of the trial Court and the appellate Court are perused. The evidence on record clearly shows that on 31.03.2001 certain CST-9 plates were found missing and within 14 days the revision petitioner/A1 and other accused were found in possession of the stolen CST-9 plates while they were loading the CST-9 plates in a lorry. The evidence of PW 5 who worked as S.E/P.Way, Warangal as on the date of occurrence is to the effect that on being requested by PW 1, he has inspected MOs 1 to 5 and 7 and found the same are railway properties. However, PW 5 admitted that

there is no specific marking thereon to show that the property belongs to the railways. On the basis of his experience, he deposed that the CST-9 plates found in possession of the accused are the railway properties. In the cross examination, what is all that is elicited from PW5 is that the properties such as M.Os.1 to 5 and 7 are being used only in Port Trust and Coal mines. The evidence of railway police officials is corroborated by the other evidence on record.

13. The evidence on record establishes that on the basis of Ex.P1 complaint, a report was prepared and thereafter, A1 to A4 were found in possession of CST-9 plates. The evidence of PWs 1 to 4 clearly establishes that it is the accused who were found in possession of CST-9 plates M.Os.1 to 5 and 7 which were certified by PW5 that they belonged to railways. On behalf of accused no oral or documentary evidence was adduced to doubt the veracity of the prosecution witnesses.

14. A perusal of the judgments of both the learned Magistrate and the learned Sessions Judge clearly show that the entire evidence has been minutely perused and a finding is delivered that the revision petitioner/A1 and other accused are responsible for the crime alleged. Upon perusing the evidence on record, I do not find any grounds to take a different view other than the view taken by both the Courts below. I find no infirmity or illegality warranting interference with the said findings.

15. With regard to quantum of sentence, the learned counsel appearing for the revision petitioner/A1 submits that the revision petitioner/A1 is aged about 35 years and he is an Auto Driver and he was not involved in any other crimes earlier, and he is the sole bread winner to his entire family, and hence prays the court to take a lenient view.

16. Considering the submissions of the learned counsel appearing for the revision petitioner/A1, this Criminal Revision Case is dismissed, confirming the conviction recorded by the Courts below against the revision petitioner/A1 for the offence alleged, but the sentence of 6 (six) months imprisonment is modified and reduced to the period 3 (three) months rigorous imprisonment in so far as the revision petitioner/A1 is concerned. The trial Court shall take steps, in accordance with law, for apprehending the revision petitioner/A1 for serving the sentence.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 05.06.2015

Dsr