

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

Criminal Revision Case No. 407 of 2013

Order:

This Criminal Revision Case is directed against the judgment, dated 20.11.2012, passed in Criminal Appeal No.45 of 2012 by the learned Metropolitan Sessions Judge, Vijayawada, confirming the judgment, dated 05.09.2011, passed in CC No. 884 of 2010 by the learned Chief Metropolitan Magistrate, Vijayawada, Krishna District.

2. The petitioner herein is the accused in C.C. No. 884 of 2010. He was charged with an offence punishable under Section 380 IPC. The allegations, in brief, are that the petitioner/accused was working as a Sweeper in Sri Durgamalleswara Swamyvarla Temple, Vijayawada. On 24.11.2009, at about 5.25 PM, he was found in possession of Rs.100/- note and one Gold Mangalasutram weighing about ½ gram, all worth about Rs.600/-, while he was coming out of the counting hall of Hundi collection point of Sri Durgamalleswara Swamyvarla Temple, Vijayawada. The Special Protection Force police personnel who were on guard duty caught him red handed and handed over him to the police. After completing investigation, the police filed charge sheet against the petitioner/accused, which was numbered as CC No.884 of 2010.

3. After complying with the mandatory provisions, trial was commenced, during the course of which, prosecution has examined PWs.1 to 5 and got marked Exs.P1 to P4 and MOs.1 and 2. The accused denied the evidence on record. After hearing both sides and on perusal of the entire material on record, the learned Chief Metropolitan Magistrate, Vijayawada, by judgment, dated 05.09.2011, found the accused guilty of the offence under Section 380 IPC and, accordingly, convicted and

sentenced him to undergo simple imprisonment for a period of 15 days and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of two months. Against the said judgment, the petitioner/accused preferred Criminal Appeal No.45 of 2012 on the file of the Metropolitan Sessions Judge, Vijayawada, and the learned Sessions Judge, by judgment, dated 20.11.2011, dismissed the said appeal confirming the conviction and sentence imposed by the trial Court. Aggrieved by the same, the petitioner/accused preferred the present revision.

4. The contention of the learned counsel for the revision petitioner is that when the petitioner/accused has entered into the counting hall there is no physical checking and it is not the case of the prosecution that he was not carrying Rs.100/- note. He further contended that the evidence of PWs.1 to 4, who are interested witnesses, is not sufficient for determining the guilt or otherwise of the petitioner/accused. He further contended that both the Courts below have erred in appreciating the evidence in proper perspective and erroneously convicted the petitioner/accused.

5. Heard both sides and perused the material on record.

6. Admittedly, the petitioner/accused was working as a Sweeper in Sri Durga Malleswara Swamivarla Temple, at Vijayawada. It is said that he was put in more than five years of service. On 24.11.2009, while he was coming out of the counting hall of Hundi collection centre of Sri Durga Malleswara Swamivarla Temple, he was checked physically by PWs.3 and 4 and found that he was in possession of Rs.100/- note and one Gold Mangalasutram weighing about ½ gram, all worth about Rs.600/- . PW.1 is the Executive Officer of the temple and PWs.3 and 4 are the police personnel who were on guard duty at the exit gate of the counting centre. The two police personnel, who found the accused in possession of Rs.100/- note and one Gold Mangalasutram weighing about ½ gram, have consistently deposed that on being checked the petitioner/accused was found in possession of the items which he could not explain. Even during the course of trial, the petitioner/accused could not explain as to how he was in possession of Gold Mangalasutram at the relevant point of time. The evidence of PWs.2, 3 and 4 is impartial and independent. Even though they were cross-examined, nothing is elicited for disbelieving their testimony. Both

the Courts below have appreciated the evidence in proper perspective and convicted the petitioner/accused. The impugned judgment does not suffer from any irregularity or illegality warranting any interference of this Court. Both the Courts below have exhibited extreme leniency in imposing the punishment, probably on the ground that the accused was working as a temporary Sweeper and worth of the property was just about Rs.600/-. Therefore, I see no reason to interfere with the conviction and sentence imposed by the Courts below. There is no merit in the revision case and the same is liable to be dismissed.

7. Accordingly, the Criminal Revision Case is dismissed.

8. As a sequel thereto, the miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

M.S.K. JAISWAL, J.

Date: 10.06.2015

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