

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No. 223 OF 2008

ORDER:

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/Accused No.2 challenging the judgment dated 06.02.2008, passed by the

III Additional Sessions Judge, West Godavari at Eluru in Criminal Appeal No.157 of 2005, 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, 'IPC') vide the judgment dated 21.07.2005 in C.C.No.937 of 2003 by the

II Additional Judicial Magistrate of I Class, Eluru, was confirmed.

2. The revision petitioner herein is accused No.2, whereas the respondent is the complainant in C.C.No.937 of 2003 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 case of the prosecution in brief is that in between 08.08.2002 to 11.08.2002, some unknown offenders gained entrance into the house of PW1 by broke open the locks of the doors and committed theft of MOs 1 to 4. Then, PW1 gave a report to the police and the same was registered as a case in Crime No.17 of 2002 for the offences punishable under Sections 457 and 380 IPC. During the course of investigation, on 11.06.2003, the S.I. of Police, Rural P.S. arrested the accused along with some others in Crime No.72 of 2003 at the house of A.1, seized the stolen properties of this case along with some other crimes and sent the accused for judicial custody. After completion of investigation, the Investigating Officer filed the Charge sheet into the court.

4. The learned II Additional Judicial Magistrate of First Class, Eluru, took cognizance of the case and framed the charge against A.1 to A.3 for the offence punishable under Section 411 IPC. During trial, on behalf of the prosecution, PWs.1 to 6 were examined and Exs.P.1 to P.9 and MOs 1 to 4 were got marked.

5. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C putting the incriminatory material deposed against them. The accused denied the same and reported no oral or documentary evidence on their behalf. After hearing arguments and after perusing the evidence available on record, the learned Magistrate convicted the accused and sentenced each of them to undergo Rigorous Imprisonment for six months. The learned Magistrate further ordered the sentence of A.1 to A.3 shall run concurrently along with other cases i.e. A.1 – C.C.Nos.935/03, 289/04, 37/04 and 38/04, A.2 – C.C.Nos.935/03 & 289/04 and A.3 – C.C.No.289/04.

6. Aggrieved by the conviction and sentence passed by the trial Court, accused No.2 preferred Criminal Appeal No.157 of 2005 before the III Additional Sessions Judge, West Godavari at Eluru, where the appellate Court after considering the oral and documentary evidence and after hearing both sides, 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.157 of 2005 and C.C.No.937 of 2003, accused No.2 preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/ accused No.2 argued that PWs 1 to 6 are not the eyewitnesses and that the *de facto* complainant has not proved the ownership of MOs 1 to 4, and prayed the Court to reduce the sentence as the revision petitioner is having a family consisting of small children.

9. On the other hand, the learned Public Prosecutor argued that both the Courts rightly held that the revision petitioner along with other accused were in possession of MOs 1 to 4 and they failed to explain the reasons as to how they came into possession of MOs 1 to 4, and therefore, both the Courts below rightly convicted the revision petitioner for the offence punishable under Section 411 IPC and prayed the Court to dismiss the revision case.

10. Now, the point for determination is -

Whether the revision petitioner/A.2 is entitled to set aside the concurrent finding given by the trial Court as well as the appellate Court for the offence punishable under Section 411 IPC?

11. **Point:**

A perusal of the oral and documentary evidence produced by the prosecution clearly establishes that PW1 gave a complaint to the police under Ex.P.1 stating that in between 08.08.2002 to 11.08.2002, some unknown offenders entered into his house and stolen MOs 1 to 4 and the police after completion of investigation, arrested the accused in the Crime No.72 of 2003, in which the accused confessed about committing the offence in the present case along with other cases. Admittedly, MOs 1 to 4 were recovered under the cover of mediators report, dated 11.06.2003. Further, both the Courts below rightly held that the accused failed to account for the possession of MOs 1 to 4 and the revision petitioner/A.2 has not given any explanation with regard to his possession. Hence, the trial Court convicted the revision petitioner/A.2 for the offence punishable under Section 411 IPC, which was rightly confirmed by the appellate Court and that the findings of both the Courts below need no interference.

12. Coming to the quantum of sentence is concerned, the learned

counsel for the revision petitioner argued that the revision petitioner is having a family consisting of small children to maintain, he is the only breadwinner and he has already undergone one month in jail from 18.06.2003 to 17.07.2003, and prayed the Court to reduce the sentence to the period already undergone if this Court comes to a conclusion that the revision petitioner/accused No.2 has committed the offence. Therefore, considering the facts and circumstances of the case, I am of the view that the quantum of sentence shall be reduced from 6 months to 3 months for the offence punishable under Section 411 IPC and as such, I am inclined to dispose of the revision as under.

13. The conviction recorded against the revision petitioner/accused No.2 by the II Additional Judicial Magistrate of I Class, Eluru, in C.C.No.937 of 2003 for the offence punishable under Section 411 IPC as confirmed by the III Additional Sessions Judge, West Godavari at Eluru in Criminal Appeal No.157 of 2005, is hereby confirmed. But, the sentence of rigorous imprisonment of six (6) months imposed by both the Courts below is hereby modified and reduced to three (3) months. The sentence of revision petitioner/A.2 shall run concurrently with the sentence passed in C.C.Nos.935/2003 and 289/2004. The period of imprisonment already suffered by the revision petitioner/ accused No.2 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.

ANIS, J

Date: 02.03.2015
Anr