

THE HON'BLE SMT. JUSTICE ANIS

CRIMINAL REVISION CASE No.651 OF 2008

ORDER:

This revision is filed by the petitioner under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') against the Judgment dated 05.02.2008 passed in C.C. No.62 of 2005 by the Judicial Magistrate of First Class, Pargi, wherein the learned Magistrate found the accused not guilty for the offence under Section 379 of Indian Penal Code, 1860 (for short, 'I.P.C.') and acquitted them.

02. The petitioner herein is the *de facto* complainant and the respondents 2 to 5 herein are the accused in C.C. No.62 of 2005.

03. The brief facts of the case are that on 26.10.2004 at 1600 hours P.W.1 lodged a complaint stating that he manufactured Bullock Cart with iron pipes; about 3 months back, the said iron pipes worth Rs.2,000/- were committed theft by some unknown persons; that on 23.10.2004 in the morning hours he found his Dhonu Moddu on the Bullock Cart of the accused. Basing on the Complaint, the police, Chengomul Police Station, registered a case in Crime No.93 of 2004 under Section 379 I.P.C., investigated into and filed charge sheet in the Court.

04. A charge under Section 379 I.P.C. was framed against the accused and read over to them in Telugu, but

they pleaded not guilty.

05. During course of trial, on behalf of the prosecution P.Ws.1 to 7 were examined and Exs.P.1 to P.10 were marked. On behalf of the accused, no evidence was adduced.

06. After considering the evidence on record, the trial court held that there are no eye witnesses to establish that A.1 to A.4 committed theft of the property of P.W.1 and the *de facto* complainant did not lodge the complaint about the theft in time and acquitted the accused for the offence punishable under Section 379 I.P.C. Aggrieved thereby, the *de facto* complainant filed the present revision on the ground that the trial court did not consider the evidence in respect of recovery of the property and finding of the trial court needs interference and prayed to set aside the Judgment dated 05.02.2008 in C.C. 62 of 2005.

07. Learned counsel for the respondents submitted that the trial court, after considering the evidence on record, acquitted the accused. It is further submitted that the *de facto* complainant himself stated in his evidence that some unknown persons committed theft, as such there is no evidence on record to establish that the accused committed the offence. It is contended that no identification parade was conducted to prove the identity of the accused. It is also contended that recovery of Donu Moddu is not marked as material object. The punch

witnesses for recovery of the said Donu Moddu turned hostile and there is no evidence on record to establish that the accused are the culprits, who committed theft and finally prayed to dismiss the revision.

08. Heard learned counsel for the petitioner and learned counsel for respondents and learned Public Prosecutor for the State of Telangana.

09. The point that arise for consideration is, whether the judgment dated 05.02.2008 passed in C.C. No.62 of 2005 by the Judicial Magistrate of First Class, Pargi is sustainable or not?

POINT:

10. P.W.1 is the de facto complainant, and he deposed that three months prior to Ex.P.1, he kept his bullock cart in front of his Cattle shed, during the night hours some unknown persons committed theft of iron pipes and Dhonu Moddu, thereafter he saw the said property in front of the house of A.1. Before the elders, the accused confessed about the commission of offence. In the cross examination, deposed that he does not have any record to show the purchase of iron pipes. In his evidence, he does not explain as to why he gave a complaint three months after the alleged theft. P.Ws.2 to 5 are the Village elders deposed that in their presence, the accused admitted about the commission of offence.

11. In the present case, no recovery was made; and panch witnesses, who was examined as P.W.6 did not

support the prosecution case and the *de facto* complainant failed to explain as to why he lodged the complaint three months after the alleged theft. It is the case of the *de facto* complainant that he is alone having Bullock Cart in the Village and the same was stolen by the accused, but however, there are no eye witnesses to the incident except the statement of P.W.1 that some unknown persons committed theft.

12. In these circumstances, the trial court, after perusing the oral and documentary evidence rightly held that the prosecution failed to prove the guilt of the accused for the offence punishable under Section 379 I.P.C. beyond reasonable doubt and the said findings needs no interference and the revision is liable to be dismissed.

13. Accordingly, the revision is dismissed.

14. Miscellaneous petitions, if any, pending in this revision shall stand closed.

ANIS, J

February 24, 2015

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