

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

Criminal Revision Case Nos.768 and 836 of 2013

COMMON ORDER:-

These two revision cases can be disposed of by common order, inasmuch as, they arise out of C.C.No.84 of 2007 on the file of the Judicial Magistrate of First Class, Mahabubnagar.

2. The petitioner is the *de facto* complainant. He filed a complaint alleging that the respondents/accused have committed theft in his shop on the intervening night of 11/12-11-2006. On the basis of the complaint, I-Town P.S., Mahabubnagar, registered a case in Cr.No.198 of 2006 for the offences punishable under Sections 457 and 380 IPC. The prosecution examined PWs.1 to 11 and produced Exs.P.1 to P.15 and M.Os.1 to 9. The learned Judicial Magistrate of First Class, Mahabubnagar, by Judgment, dated 03-02-2012, found A.1 and A.2 guilty of the offence punishable under Section 379 IPC., and A.4 guilty of the offence punishable under Section 411 IPC., and accordingly A.1 was sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.5,000/-, A.2 and A.4 were sentenced to pay a fine of Rs.2,000/- each. A.3 and A.5 were acquitted of all the charges. A.1, A.2 and A.4 were also acquitted of the charges under Section 457 and 380 IPC.

3. Aggrieved by the said Judgment, five Criminal Appeals bearing Nos.18, 33, 37, 99 and 100 of 2012 were filed on the file of the learned Sessions Judge, Mahabubnagar. The State and the *de facto* complainant challenged the acquittal of the accused and also questioned the inadequacy of the sentence imposed against A.1, A.2 and A.4. The accused who were convicted and sentenced also preferred the appeal questioning their conviction and sentence. By common Judgment, dated 08-01-2013, the learned Sessions Judge has allowed the appeal of the convicted accused and dismissed the appeals filed by the State and the *de facto* complainant against the acquittal and seeking enhancement of the sentence.

4. Aggrieved by the said Judgment, the *de facto* complainant preferred these two revisions in hand contending that the Courts below have erred in acquitting the accused and even though the trial Court found A.1 and A.2 found guilty of the offence punishable under Section 379 IPC., and A.4 found guilty of the offence punishable under Section 411 IPC., has imposed grossly inadequate sentence.

5. The brief facts of the prosecution case are as under:-

The petitioner is examined as PW.1 in the Calender Case. Himself and A.1 are doing business in Onions in the Old Gunj at Mahabubnagar. They are having shops adjacent to each other. PW.1 originally took his shop bearing No.2-10-19 on lease. Subsequently, in the year 1993, he agreed to purchase the mulgi for a consideration of Rs.8,10,116/- and paid Rs.10,116/- as advance. The son of Balaiah, by name Narayana, filed O.S.No.44 of 1993 and obtained injunction and therefore the sale deed was not executed. Subsequently, Balaiah died. The son of Balaiah, by name Narayana, came forward to sell the said shop to PW.1 and entered into fresh agreement for a total consideration of Rs.11,50,000/- and received Rs.25,000/- cash and the cheque for Rs.50,000/- as advance. Subsequently, the said Narayana also did not execute the sale deed in favour of PW.1 and therefore he had to file O.S.No.38 of 2006 for specific performance of the contract against the said Narayana, his sons, including A.1, since it was claimed that A.1 has purchased the shop which was in possession of PW.1.

While the matter stood thus, on 12-11-2006 at about 09.00 a.m., PW.2 who was the son of PW.1 went to the shop and found the locks of the shop were broken and on verification, the stock of onion, tamarind, weighing machine, almirah, table and some registers were found missing. PW.1 went to the shop and lodged a complaint with the police expressing suspicion against A.1 who was insisting PW.1 to vacate the shop.

During the course of investigation, the accused were arrested and from the possession of A.4, some of the stolen articles were recovered.

6. The contention of the petitioner is that even though there was

sufficient evidence showing the involvement of the accused, both the Courts below have erred in finding them not guilty of the charges and the appellate Court has acquitted all the accused even though the trial Court has convicted A.1, A.2 and A.4 for the offence punishable under Section 379 and 411 IPC. Learned Counsel further submits that the trial Court has sentenced A.1 to undergo rigorous imprisonment for a period of six months and fine of Rs.5,000/- and sentenced A.2 and A.4 to pay a fine of Rs.2,000/- and even this conviction and sentence has erroneously set aside by the appellate Court. Hence, the two revisions.

7. The contention of the accused is that in view of the existence of the disputes between PW.1 and A.2, which is the subject matter of civil suits, a false complaint was filed by PW.1 expressing suspicion against A.1 and the Investigating Officer did not conduct proper investigation and has charge-sheeted the accused. It is submitted that the appellate Court has properly appreciated the material on record and held that the charges against the accused are not proved and therefore the said Judgment said to be perverse, irregular or illegal.

8. As noticed from the foregoing discussion, the case of the prosecution is that in view of the existing civil disputes in between PW.1 and A.1 in the matter of vacating the mulgi in which PW.1 was doing business, the accused have committed the offence of breaking open lock of the mulgi in occupation of PW.1 and committed theft of several items such as onion, tamarind, table, registers etc. The complaint came to be lodged by PW.1 on the basis of the information furnished to him by PW.2. PW.1 and A.1 are having shops adjacent to each other in Old Gunj, Mahabubnagar. Both of them are dealers in Onion. There are no direct eye-witnesses to the incident and even according to PW.1, in view of the existing litigation between PW.1 and A.1, he is suspecting the involvement of A.1 in the theft committed in his shop. It is admitted by PW.1 that A.1 is well to do businessman having own buildings in the town. It is in the evidence of PW.1 that he suspected the involvement of A.1 for the theft only on the ground that it is A.1 who purchased the shop in possession of PW.1 and wanted PW.1 to vacate the same.

9. PWs.2, 3 and 4 only speak about the theft only having been committed and their evidence is not relevant. PW.5 is the panch witness for the scene of offence.

10. PW.6 is the panch witness in whose presence A.1, A.2 and A.4 are alleged to have confessed to have committed the crime. It is further in his evidence that A.1 and A.2 confessed having committed the crime and stated that the stolen property is kept in the house of A.4. The panch witnesses and the police went to the house of A.4 and A.4 is said to have shown the stolen property kept in a room in his house. The evidence of PW.6 was not believed by the lower Court on the ground that the evidence is not convincing. PW.6 could not also give the requisite details about the items seized from the house of A.4. No confessional panchanama was recorded in the presence of A.4. The prosecution did not examine the other panch witness and the evidence of PW.6 do not conclusively establish that it is A.1 and A.2 who have confessed to have committed the theft in the shop of PW.1 and led the police and the panchas to the house of A.4 from where the stolen articles were recovered so as to held A.1, A.2 and A.4 guilty of either the offence punishable under Section 379 IPC., or 411 IPC.

11. Insofar as A.5 is concerned, he is said to be the driver of DCM vehicle in which the stolen articles were shifted from the shop of PW.1 in the night. PW.7 is said to be the owner of the said vehicle and he produced the same before the police.

12. Learned Counsel appearing for the accused submits that Old Gunj in Mahabubnagar is a busy area and even during the night lot of activities will be going on in that area for the reason that several vehicles will come for loading and unloading the goods and several hamalies and labourers will be moving around even during night times. It is further submitted that from such an area, it is difficult to believe that the accused would have broke open the locks of the shop and loaded all the items such as Onion, Tamarind, Registers, Water cooler etc., from the shop into the van and shifted the same and this would not have gone unnoticed by the people moving around. In that view of the matter, learned Counsel submits that

the entire case is falsely built up only because it is A.1 who has purchased the shop which was in possession of PW.1 and it was also intended to be purchased by PW.1 but due to some disputes, the matter is pending in the civil Court.

13. Learned Sessions Judge has appreciated all the material on record in proper perspective and held that A.1, A.2 and A.4 cannot be found guilty of the charges punishable under Sections 379 and 411 IPC. Since the entire case was held to be not proved, learned Sessions Judge has also dismissed the appeals filed by the State and the *de facto* complainant questioning the acquittal of the accused and inadequate sentence. Having gone through the evidence on record, I see no reason to interfere with the said findings which are based on proper appreciation of the evidence on record. There are no merits in both the revisions and the same are liable to be dismissed.

14. In the result, both the Criminal Revision Cases are dismissed. Miscellaneous petitions, if any, pending in these revisions shall stand closed.

M.S.K.Jaiswal, J

July, 2015

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