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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 401/2011

Date of decision: 17.11.2015

KAMLA

..... Appellant

Through: Mr. Chetan Lokur, Adv.

versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Ms. Alpana Pandey, APP.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

1. Kamla was charged under Sections 381/411 of the IPC but was acquitted by the Trial Court vide judgment dated 12.08.2010. The aforesaid judgment of acquittal was challenged by the State of NCT of Delhi in Appeal (Criminal Appeal No.28/2010) before the learned District & Sessions Judge, Dwarka Courts, Delhi.

2. The Appellate Court, vide its judgment and order dated 06.01.2011 and 10.01.2011, set aside the judgment of acquittal and convicted and sentenced Kamla for 3 years SI and a fine of Rs.10,000/- for the offence under Section 381 of the IPC. Kamla was further convicted and sentenced with a fine of Rs.30,000/- for the offence under Section 411 of the IPC. In case of non-payment of fine,

she was directed to suffer imprisonment for 4 months and 8 months for the aforesaid offences respectively.

3. Kamla, thereafter, instead of preferring a revision petition, preferred an appeal vide Criminal Appeal No.401/2011. It would not be in the interest of justice, at this stage, to dismiss the appeal on that score or ask Kamla to prefer a fresh revision petition against the judgment and order passed by the Appellate Court, convicting and sentencing her for offences under Sections 381/411 of the IPC. Hence, the present petition is treated as a revision petition against the Appellate judgment and order.

4. Heard Mr.Chetan Lokur, the learned Amicus.

5. Smt. Kanta Mehta (PW.1), w/o Sh.Manmohan Mehta, lodged a complaint alleging that she had employed the petitioner as a maid servant in her home. The petitioner had come to her home on 10.08.2007 in the evening at 05:00 p.m. and without taking leave from her, left her house at 06:00 p.m. When PW.1 checked her house, she found that one of the almirahs was open. On further search, Rs.40,000/- in cash and some jewellery were found to be missing. She, therefore, suspected that the petitioner has committed theft in her house. In the FIR, PW.1 asserted that she could identify the stolen articles.

6. PW.1 categorically deposed before the Trial Court that the in the locker of the almirah, Mangalsutra, two pairs of earrings, a gold necklace, one gold locket, two gold bangles, one gold ring and

Rs.40,000/- in cash were kept which were found missing after Kamla left her home. The cash amount was in the currency notes of the denomination of Rs.500/-. In her presence, Rs.40,000/- was recovered from the house of the petitioner.

7. PW.1 had put her signatures on the seizure memo Ex.PW.1/B. The currency notes, recovered from the house of the petitioner, were taken on superdari by PW.1 under the orders of the Court (Superdarinama and Indemnity bond are Ex.PW.1/D and Ex.PW.1/E respectively.)

8. PW.1 has deposed that the petitioner had not disclosed to her that she had sold her house or that she was having any money with her. The suggestion that PW.1 was aware of the fact that there was some money kept in the house of the petitioner was vehemently denied.

9. Head Constable Ishwar Singh (PW.2) has deposed that she had visited the house of PW.1 after a call was received in the police station from her. PW.2 along with SI Ramesh, Ct. Naresh and Lady Ct. Urmila and PW.1 went to the house of the petitioner where she was found present. The petitioner was interrogated.

10. PW.2 has further deposed that a sum of Rs.40,000/- was found to be kept in a small iron box in the house of the petitioner. The aforesaid amount was taken in possession and it was seized vide seizure memo Ex.PW.1/B. The petitioner was thereafter arrested and her personal search was carried out by lady Ct. Urmila vide arrest

memo No.Ex.PW.1/F1. The petitioner is said to have been made her disclosure statement (Ex.PW.1/B).

11. The case was investigated by Ramesh Chand , the investigating officer, (PW.5). He has testified to the fact that after the disclosure statement of the petitioner (Ex.PW.2/B), Rs.40,000/- (80 currency notes of the denomination of Rs.500 each) was recovered from the house of the petitioner. The police officers had visited the house of PW.1 at 09:30 p.m. and arrived at the house of the petitioner at around 10:00 p.m.

12. Lady Ct. Urmila (PW.3) has testified to the fact that the petitioner made a disclosure statement and Rs.40,000/- was recovered from her house. However, she has stated that no independent person had joined the investigation except PW.1.

13. Kamla, in her statement under section 313 of the Cr.P.C., had stated that the recovery of Rs.40,000/- was foisted by the police at the instance of PW.1, the complainant. She claimed to have received an amount of Rs.50,000/- on 16.06.2007 as advance for the sale of the plot no.D-67 from one Mohd Sajid Ansari (DW.2).

14. Razi Haider (DW.1) has spoken about his being a mediator in the deal of the property pertaining to flat no.67D, Prem Nagar, Delhi belonging to the petitioner. He has stated that though he is not a property dealer, he indulged in petty work on commission basis.

15. Mohd.Shajid Ansari (DW.2) has deposed that he had paid Rs.50,000/- to the petitioner as part of the consideration amount of the property which was agreed to be purchased for Rs.2,15,000/-.

16. The Trial Court, on noting the fact that apart from the recovery of cash amount, there is no recovery of any jewellery item and that there was some discrepancy about the correct time of the occurrence leading to the apprehension of the ante-timing of the FIR and the search and seizure proceedings, acquitted the petitioner. Another aspect which weighed with the Trial Court was that PW.1, the complainant, had admitted of her dealing in artificial jewellery from her house. This fact made it obvious that the house of PW.1 was accessible to others also. Thus, finding the entire set of evidence against the petitioner to be lacking, the petitioner was acquitted.

17. The Appellate Court however was of the view that from the deposition of the prosecution witness, what stood established was that a theft had taken place in the house of PW.1 wherein cash amount of Rs.40,000/- and some jewellery articles were stolen. The other fact which assumed significance was that the petitioner worked as a domestic help in the house of the PW.1 and on the relevant date, she had left the house of PW.1 without informing anybody. These two facts coupled with the recovery of Rs.40,000/-, constituting of 80 currency notes of Rs.500 denomination, from the house of the petitioner has put a seal and stamp over the fact that it was the petitioner only who had committed theft in the house of the PW.1.

18. The analogy and observations of the Appellate Court stands buttressed by the fact that the defence taken by the petitioner was not found to be convincing. No document was proved before the Trial Court to demonstrate that the petitioner was the owner of flat no.D-67. In that event Ex.DW1/A, the agreement to sale, does not at all establish the ownership of the petitioner of the property in question. The transfer of the aforesaid property in favour of DW.2 also appears to be clouded with suspicion as the document is insufficiently stamped and is neither notarised nor registered. Even the cash receipt (Ex.DW.2/B) does not appear to be genuine as there is no revenue stamp over the same.

19. No effort has been made by the petitioner to prove the title of the aforesaid property, the sale of which fetched money, and which would have lent strength to the explanation of the petitioner regarding recovery of Rs.40,000/- in cash from her house.

20. The Appellate Court, therefore, is justified in holding that Ex.DW.1/A and Ex.DW.1/B i.e. agreement to sale and the receipt of money are spurious documents.

21. The Judgment of acquittal passed by the Trial Court was therefore reversed and the petitioner was convicted and sentenced for SI for 3 years and a fine of Rs.10,000/- in default of payment of which further SI for 4 months for the offence under Section 381 of the IPC. The Appellate Court only imposed fine (Rs.30,000/-) on the petitioner for the offence under Section 411 of the IPC, with the default

stipulation that in case of non-payment of the aforesaid fine, the petitioner would suffer imprisonment for a period of 8 months.

22. From the nominal roll, it appears that the petitioner has remained in custody for about 3 months and 9 days.

23. The occurrence is of the year 2007.

24. Keeping in mind the status of the petitioner namely she being a maid servant and the number of years that took in conclusion of the Trial, the sentence of 3 years for the offence under Section 381 of the IPC and a fine for the offence under Sections 381 & 411 of the IPC, appear to excessive.

25. In the opinion of this Court, interest of justice would be subserved if the petitioner is sentenced to the period which she has already undergone in custody.

26. Thus maintaining the conviction, the sentence imposed upon the petitioner is reduced to the period which she has already undergone. The imposition of fine is waived.

27. The revision petition is thus partially allowed.

28. The petition is disposed of in terms of the aforesaid observations.

NOVEMBER 17, 2015
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ASHUTOSH KUMAR, J