

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.205 of 2008

ORDER:

_____ This criminal revision case is filed by the petitioner-accused challenging the judgment dated 04.2.2008 in Criminal Appeal No.77 of 2006 on the file of the court of Sessions Judge : Mahila Court, Vijayawada wherein and whereby the conviction and sentence imposed against the petitioner on 18.4.2006 in C.C. No.1371 of 2002 on the file of the court of I Additional Metropolitan Magistrate, Vijayawada was confirmed.

2. _____ The facts leading to filing of the criminal revision case are as follows: On 21.6.2001 some unknown offenders committed theft of two wheeler of P.W.1. Similarly, the two wheelers of P.Ws.2 and 3 were committed theft by some unknown offenders. Basing on the complaints (Exs.P1 to P3) given by them, the Station House Officer, S.N.Puram Police Station, Vijayawada City registered cases in crime Nos.316 of 2001, 331 of 2001 and 371 of 2002 for the offence under Section 379 IPC and issued F.I.Rs – Exs.P9 to P11 respectively. After completion of investigation, the Investigating Officer (P.W.12) laid charge sheet against the accused under Section 379 and / or Section 411 IPC. _____

4. _____ In order to prove the guilt of the accused, the prosecution examined P.Ws.1 to 12 and marked Exs.P1 to P11 and M.O.1. On behalf of the accused, no oral or documentary evidence was adduced.

5. _____ The trial court, after appraising the oral and documentary evidence available on record, arrived at a conclusion that the accused committed the offence punishable under Section 411 IPC, convicted him accordingly and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2,000/-; in default of payment of fine, the accused shall undergo simple imprisonment for a period of three months. Feeling aggrieved by the conviction and

sentence imposed by the trial court, the accused preferred CrI.A. No.77 of 2006 on the file of the court of Sessions Judge :: Mahila Court, Vijayawada. The learned Sessions Judge, after reappraising the oral and documentary evidence available on record, arrived at a conclusion that the accused committed the offence punishable under Section 411 IPC and accordingly confirmed the conviction and sentence imposed by the trial court. Hence, the present criminal revision case is filed by the accused.

6. The contention of Sri P.Nitender Singh, learned Advocate, representing Sri T.Pradyumna Kumar Reddy, learned counsel for the petitioner-accused, is four fold:

- (1) the prosecution failed to prove that the accused has committed theft of motor cycle-M.O.1;
- (2) the courts below failed to appreciate that recovery of M.O.1 from the possession of the accused was not proved beyond reasonable doubt;
- (3) the findings recorded by the courts below are based on the material, which is not legally admissible; and
- (4) the findings recorded by the courts below are perverse and not legally sustainable.

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7. Controverting the submissions made by the learned counsel for the petitioner-accused, learned Public Prosecutor submitted that by examining P.Ws.1 to 3, 11 and 12, the prosecution clearly established that unknown person committed theft of Moped of P.W.1 (M.O.1) and the same was recovered from the possession of the accused. He further submitted that the findings recorded by the courts below are supported by material, which is legally admissible. He also submitted that there are no grounds much less valid grounds to upset the findings recorded by the courts below.

8. Now the point that arises for determination in this case is:

Whether the findings recorded by the courts below are perverse, which warrant interference of this court?

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9. In order to appreciate the rival contentions, it is not out of place to extract hereunder the relevant case law.

K. Chinnaswamy Reddy v. State of A.P. ^[1],

7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.

In Amar Chand Agarwalla Vs. Shanti Bose and Anr., etc. ^[2] at

para No.20 the Hon'ble apex Court held as follows:

“Even assuming that the High Court was exercising jurisdiction under Section 439, in our opinion, the present was not a case for interference by the High Court. The jurisdiction of the High Court is to be exercised normally under Section 439, Criminal Procedure Code, only in exceptional cases, when there is a glaring defect in the procedure or there

is a manifest error of point of law and consequently there has been a flagrant miscarriage of justice. The High Court has not found any of these circumstances to exist in the case before us for quashing the charge and the further proceedings.”

The same principle was reiterated in **State of Haryana Vs. Rajmal**^[3].

10. Let me consider the facts of the case on hand, in the light of the above legal principle. Establishment of the following three ingredients is *sine qua non* to convict a person under Section 411 IPC.

(1) that the stolen property was in the possession of the accused;

(2) that some person other than the accused had possession of the property before the accused got possession of it, and

(3) that the accused had knowledge that the property was stolen property.

11. As seen from the testimony of P.Ws.1 to 3, unknown person committed theft of their motor cycles and lodged complaints to the Station House Officer, S.N.Puram Crime Police Station, Vijayawada City. Basing on the complaints (Exs.P1, P2 and P3) lodged by P.Ws.1 to 3, the Station House Officer registered three criminal cases and issued F.I.Rs (Exs.P9, P10 and P11). The testimony of P.Ws.1 to 3, 11 and 12 is corroborating with each other with regard to lodging of complaints. As seen from the testimony of P.Ws.4 and 5, some unknown vehicles were parked in front of their house. Of course, they have not identified the accused. For one reason or the other, P.Ws.4 and 5 did not support the case of the prosecution. Merely because the witnesses turned hostile to the prosecution, by itself is not a valid ground to discard their testimony in toto. The court can place reliance on the testimony of hostile witness to the extent they support the case of prosecution. In this case, the court can place reliance on the testimony of P.Ws.4 and 5 so far as parking of some unknown vehicles in front of their house is concerned. As seen from the testimony of P.Ws.6 and 7, on suspicion they watched the movements of the accused. Their testimony further reveals that the accused parked the vehicles in front of the house of P.Ws.4 and 5. The testimony of

P.W.10 clearly reveals that in pursuance of the information given by the accused, the Investigating Officer (P.W.12) seized M.O.1 Moped in their presence under the cover of panchanama (Ex.P8). In the cross-examination of P.Ws.10 and 12, nothing is elicited to shake their testimony so far as recovery of M.O.1 in pursuance of the information given by the accused. It is not the case of the petitioner that he is the owner of M.O.1. P.W.1 is the owner of M.O.1–Moped. Just prior to the committing of the theft, M.O.1 was in possession of P.W.1. The accused failed to explain how he came into possession of M.O.1 Moped. The material placed before the court clinchingly establishes that the accused came into possession of M.O.1 Moped knowing fully well that it is a stolen property.

12. Once a person is found in possession of stolen property, the court can draw presumption under Section 114(a) of the Evidence Act unless contrary is proved. The very purpose of cross-examination of prosecution witnesses is to demolish the case of prosecution. The courts below mainly placed reliance on the testimony of P.Ws.1 to 3, 10 and 12. In the cross-examination of P.Ws.1 to 3, 10 and 12, nothing is elicited to disbelieve the version put forth by the prosecution. The trial court arrived at a conclusion that the accused committed the offence under Section 411 IPC basing on the testimony of P.Ws.1 to 3, 10 and 12. The first appellate court, after reappraising the oral and documentary evidence available on record fully endorsed the finding recorded by the trial court. The testimony of the prosecution witnesses is coherent, cogent and convincing in all material aspects. There are no grounds much less valid grounds to disbelieve their testimony. In such circumstances, I am unable to accede to the contention of learned counsel for the petitioner-accused that the findings recorded by the courts below are not supported by any material. There is no legal flaw in the findings recorded by the courts below, which warrants interference of this court. Viewed from any angle, I am unable to accept the contention of learned counsel for the petitioner-accused that the

findings recorded by the courts below are perverse.

13. With regard to quantum of sentence imposed by the trial court and affirmed by the appellate court, by the time of committing of the offence the accused was aged about 30 years. The offence was committed in the year 2001. The value of the Moped is only Rs.6,000/- . The sentence imposed shall commensurate the gravity of the offence. Taking into consideration the facts and circumstances of the case, this court is inclined to reduce the sentence of rigorous imprisonment from three years to two years while affirming the fine amount.

14. In the result, the criminal revision case is dismissed. However, the sentence of rigorous imprisonment imposed against the accused for the offence under Section 411 IPC, is reduced from three years to two years. The sentence of fine amount is confirmed. The bail bonds executed by the accused shall stand cancelled. The trial court is directed to take appropriate steps to see that the accused shall undergo the remaining period of sentence. Miscellaneous petitions if any pending in the criminal revision case shall stand closed.

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T.SUNIL CHOWDARY, J

February 22, 2016.
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[\[1\]](#) AIR 1962 SC 1788

[\[2\]](#) (1973) 4 SCC 10

[\[3\]](#) (2011) 14 SCC 326