THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL. R.C. NO.1767 OF 2017,
CRL. R.C. NO.1769 OF 2017,
CRL. R.C. NO.1773 OF 2017,
CRL. R.C. NO.1788 OF 2017,
CRL. R.C. NO.1765 OF 2017,
CRL. R.C. NO.1774 OF 2017,
AND
CRL. R.C. NO.1775 OF 2017

COMMON ORDER:

In all the above (7) criminal revision cases, since the revision petitioners 1 and 2/A-1 & A-2 are common, I deem it appropriate to dispose of all the revision cases by common order.

2. Aggrieved by the judgments in Crl.A.No.91 of 2016 dated 23.05.2017, Crl.A.No.92 of 2016 dated 23.05.2017, Crl.A.No.93 of 2016 dated 24.05.2017, Crl.A.No.94 of 2016, dated 24.05.2017, Crl.A.No.96 of 2016 dated 25.05.2017, Crl.A.No.99 of 2016 dated 29.05.2017, and Crl.A.No.100 of 2016 dated 29.05.2017 passed by the Principal Sessions Judge, Warangal, these criminal revision cases are filed under Sections 397 and 401 of Cr.P.C. questioning the propriety, legality and correctness of the impugned judgments finding the petitioners 1 and 2/Accused Nos.1 and 2 guilty for the offence punishable under Section 411 I.P.C. and sentencing them to undergo imprisonment for one year by reducing the substantive sentence of three years imposed by the trial Court.

3. The sum and substance of the prosecution case is that the petitioners 1 and 2 committed theft of gold and silver ornaments by using criminal force or assault, thereby they committed offences

punishable under Sections 379 and 356 IPC. Apart from these crimes, they were also involved in so many crimes.

4. The police on receipt of complaints, registered cases and issued F.I.Rs. against unknown persons. During investigation, the Sub-Inspector of Police examined several witnesses and recorded their statements. He visited the scene of offence and drafted Ex.P-4-crime details in the presence of Ramesh Babu and Pasula Srinivas and later PW-4 continued the investigation. PW-3, Sub-Inspector of Police, P.S. Mills Colony arrested petitioners/A-1 and A-2 on 14.9.2015 in Crime No.516 of 2014 of Police Station, Subedari. Petitioners/A-1 and A-2 confessed about the commission of offences in the present cases and also in other crimes before PW-3 and also in the presence of panch witnesses Chidurala Venu PW-2 and Syed. Shakeer Hussain. On the basis of such confession leading to discovery, which is relevant under Section 27 of the Evidence Act, the police seized material objects from the possession of petitioners/A-1 and A-2 under cover of seizure panchanama by PW-3. Petitioners/A-1 and A-2 were remanded to judicial custody in Crime No.516 of 2014 and PW-4 Sub-Inspector of Police filed requisition before the court for issuance of P.T. warrant against A-1 and A-2 and the court issued P.T. warrant and on execution of P.T. warrant, they were remanded to judicial custody and after completion of investigation, PW-4 filed charge sheet.

5. On considering the material and after compliance of necessary formalities under Section 207 Cr.P.C., framed charges against petitioners/A-1 and A-2 for the offences punishable under Sections 379, 356 IPC against A-1 and under Section 411 IPC against

A-2, explained the gist of the charges in Telugu, they pleaded not guilty and claimed to be tried.

6. During trial, on behalf of the prosecution, PWs.1 to 5 were examined and marked Exs:P-1 to P-4 and marked M.Os.1 to 3.

7. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C., explaining the incriminating material that appeared against them in the evidence of prosecution witnesses, they denied the same and reported no defence.

8. Upon hearing argument of both counsel, the trial court found the accused guilty for the offence under Section 411 IPC while acquitting the accused for the offence under Sections 379 and 356 IPC, sentenced petitioners to undergo substantive sentence of R.I. for three years and to pay fine of R.10,000/- with default sentence for the offence under Section 411 IPC while directing substantive sentence shall run concurrently being set off under Section 428 Cr.P.C.

9. Aggrieved by the conviction and sentence passed by the trial court under impugned calendar and judgments, preferred above mentioned criminal appeals, which were ended in dismissal by the Principal Sessions Judge, Warangal and reduced the substantive sentence of R.I. from three years to one year.

10. The present revision cases are filed raising general grounds, more particularly about failure of Sub-Inspector of Police to conduct test identification parade for identifying the petitioners and property and non-consideration of plea of the petitioners by the trial court regarding purchase of items for sale of property for Rs.10 lakhs and finally requested to set aside the convictions and sentences imposed by the appellate Court.

11. During hearing, learned counsel for the petitioners would contend that the petitioners already undergone imprisonment for 7½ months approximately and in the absence of test identification parade of the property and the person, the concurrent findings recorded by the courts below are erroneous, unsustainable under law and apart from that the plea of the petitioners is that they sold their property for Rs.10 lakhs purchae of gold and silver items which were recovered from their possession and if this plea is accepted, both the Courts below would have acquitted the accused for the offence punishable under Section 411 IPC, but committed an error.

12. Learned Public Prosecutor for the State of Telangana supported the concurrent findings recorded by both the courts below while contending that this court cannot interfere with the fact finding recorded by both the courts below while exercising power under Section 397 and 401 IPC where there is manifest perversity or apparent error in the judgments and prayed to dismiss the revisions.

13. In view of the specific contentions raised before this Court regarding failure to conduct test identification parade of both the petitioners and the property and non-consideration of plea of the petitioners about sale of property and purchase of gold and silver ornaments, the point that arises for consideration in these revisions is:

> "Whether the petitioners/accused 1 and 2 were found in possession of stolen property with dishonest intention believing the property as stolen property, if so, whether they are liable to be convicted?

14. The present revisions are filed under Section 397 and 401 Cr.P.C. under which the jurisdiction of this court is limited.

15. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of

satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

16. The well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories afore-stated.

17. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this court under Article 136 of the Constitution of India. Normally, a

revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

18. Section 401 confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or apparent harshness of treatment which has on one hand resulted in some injury to the due maintenance of law and order or on the other hand, in some undeserved hardship to individuals. The revisional power conferred on the High Court by this section is discretionary power, has to be exercised in the aid of justice and this Court will not exercise jurisdiction under this Section if there has been no failure of justice even though the proceedings of the lower court suffer from irregularity or impropriety as held by Apex Court in STATE OF WEST BENGAL v. TULSIDAS[1]. The revisional jurisdiction conferred upon this Court by Section 401 Cr.P.C. has to be exercised only for the purpose of relieving persons who have not had a fair trial or whose convictions have been arrived at by non-observance of material provisions of the law or by such mis-directions as must have occasioned a failure of justice as held in PRAHLAD v. EMPORER[2]. Further, the High Court can, in exercise of its revisional powers, either suo motu on the basis of its own knowledge derived from any source whatsoever, or on an

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[1] (1964) 1 Crl.L.J. 443 (SC)
[2] 48, Crl.LJ 173, 174 (Pat)

application by a complainant, exercise the powers of an appellate Court both with respect to acquittal and conviction. This revisional power is subject to the following three limitations:

> Firstly, no order can be made to the prejudice of the accused or other person unless he had an opportunity of being heard personally or by a pleader in his own defence;
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> Secondly, it cannot convert a finding of acquittal into one of conviction;
>
> Thirdly, no revision can be entertained at the instance of a party who could have appealed under the Code and has not appealed.

19. The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or proprietary of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under Section 397 is a very limited one. The legality, proprietary or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.

20. Thus, the powers of the High Court are limited, and this Court cannot interfere with the concurrent fact findings recorded by the courts below. As a general rule, the High Court will not in revision interfere with a finding of fact and this is specially so, where there are concurrent findings of facts of the lower Courts. But, in special and exceptional circumstances, the High Court is entitled to go into questions of fact and do justice, though the power should be rarely

exercised, as held by Apex Court in S.P.S. JAYAM & CO. v. NEHRUSADAN[3].

21. In revision, the High Court usually accepts the findings on questions of facts recorded by a subordinate Court unless the finding is manifestly perverse or patently erroneous in view of the law declared by the Apex Court in BANSILAL v.LAXMAN[4].

22. In the absence of any perversity in appreciation of evidence or patent error, this Court cannot interfere with the findings of the trial Court.

23. In the present cases, the first and foremost contention raised by the learned counsel for the petitioners is that no test identification parade of property and also the person was conducted. Section 9 of the Evidence Act deals with conducting of test identification parade and it is only relevant piece of evidence. But, failure to conduct test identification parade by itself is not a ground to disbelieve the case of the prosecution and more particularly when the accused were found in possession of stolen property and identified in the court.

24. The purpose of test identification parade either accused or property under Section 9 of the Evidence Act is necessary to explain or introduce relevant facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that

[3] 1977 Crl.L.J. 1101
[4] (1986) 3 SCC 445

purpose. Necessity of holding test identification parade is discussed by Apex Court in in Shyamlal Ghosh Vs. State of West Bengal[5], it is held as under:

> "The whole idea of a Test Identification Parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime.
>
> Failure to hold the test identification parade while in police custody, does not by itself render the evidence of identification in court inadmissible or unacceptable. There have been numerous cases where the accused is identified by the witnesses in the court for the first time. One of the views taken is that identification in court for the first time alone may not form the basis of conviction, but this is not an absolute rule. The purpose of the Test Identification Parade is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of the witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings."

25. In view of limited purpose of conducting test identification parade of either person or property, the testimony of eyewitness is also main evidence for deciding the real controversy. In the present facts of the case, PW-1 identified the property in the court and the accused also.

26. In Ravi Kapur v. State of Rajasthan[6] the Supreme Court discussed about the importance to hold test identification parade for identifying the accused and held as follows:

> "The whole idea of a Test Identification Parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime.

27. It is equally correct that the Code of Criminal Procedure does not oblige the investigating agency to necessarily hold the Test

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[5] AIR 2012 3539
[6] AIR2012SC2986

Identification Parade. Failure to hold the test identification parade while in police custody, does not by itself render the evidence of identification in court inadmissible or unacceptable. There have been numerous cases where the accused is identified by the witnesses in the Court for the first time. One of the views taken is that identification in Court for the first time alone may not form the basis of conviction, but this is not an absolute rule. The purpose of the Test Identification Parade is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of the witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence is, however subjected to exceptions."

28. In Sheo Shankar Singh v. State of Jharkhand and Anr.[7] The Apex Court held as follows:

> "Failure to hold Test identification parade does not have effect of weakening evidence of identification in Court, as to what should be the weight attached to such an identification is a matter which Court will determine in peculiar facts and circumstances of each case. Version of two eye-witnesses that it was accused who had shot deceased. However, only one of witnesses associated with Test Identification Parade in which he identified accused. Failure of prosecution to offer an explanation for not holding Test Identification Parade for other witness will not ipse jure prove fatal to case of prosecution."

29. In the above judgments, the Apex Court laid emphasis that the Code of Criminal Procedure does not obligate the investigating agency to necessarily hold a test identification parade nor is there any provision under which the accused may claim a right to the holding of a test identification parade. Failure of the investigating agency to hold a test identification parade does not, in that view, have the effect of weakening the evidence of identification in the

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[7] (2011) 3 SCC 654

Court. As to what should be the weight attached to such an identification is a matter which the Court will determine in the peculiar facts and circumstances of each case. In appropriate cases the Court may accept the evidence of identification in the Court even without insisting on corroboration.

30. There is no dispute regarding the law declared by the Apex Court. In long lines of judgments of the Apex Court the evidence of an injured witness is reliable, unless the testimony of an injured witness is impeached in the cross-examination, the victims who lost their articles can be equated with injured witness.

31. By virtue of the principles in the above judgments, failure of the prosecution to conduct test identification parade for identification of the accused and property is not vital.

32. The trial court also discussed about the evidence on record and rightly concluded that the accused were the persons who are in custody of the stolen goods i.e. gold and silver articles even-after reappraisal of entire evidence by this court, it is difficult to uphold the contention of the petitioners that failure to conduct test identification parade of accused and property is fatal since PWs.1, 3 and 4 identified the accused. PW-1 identified A-2 who travelled along with her in the auto when pusthelathadu was found missing after getting down from the auto and PWs.3 and 4 identified the person from whom M.O.1 was recovered along with other articles. Similarly inother calendar cases the witnesses identified the accused and property. This evidence is suffice to accept that the petitioners were the persons who were in possession of stolen articles believing that they were stolen with dishonest intention. Therefore, failure to conduct test identification parade is not fatal to the case of the prosecution.

33. The second contention raised before this court and trial court is that the petitioners purchased those items recovered from the possession of the accused/petitioners herein after sale of the property for Rs.10 lakhs. But, the trial court recorded a finding specifically that if really the petitioners purchased the gold and silver items after the sale of house property for Rs.10 lakhs, there must be some documentary evidence in support of sale of property and purchase of gold and silver items. But, at another stage before the trial court they contended that the police made the petitioners to sell the house property and purchase gold and silver articles and planted those ornaments in different crimes roping the petitioners/accused with different crimes. The plea of the accused is not consistent; they changed their version from time to time subject to their convenience. Even assuming for a moment that the plea of the accused that they sold the house for Rs.10 lakhs and purchased the various gold and silver articles, they would have produced at least a document evidencing sale of immovable property for Rs.10 lakhs. But, no such piece of evidence is brought on record especially sale of house property for Rs.10 lakhs and purchase of gold and silver articles recovered from the possession of both the accused while they were proceeding on motorcycle. Therefore, this plea is not worthy of consideration and the trial court and appellate court considered the plea and rejected such plea disbelieving the same.

34. One of the contentions of the learned Public Prosecutor for the State of Telangana is that when the petitioners were found in possession of the property, a presumption under Section 114(a) of Evidence Act would come into play and the court may draw such

presumption that they are either thieves or persons received stolen property.

35. Section 410 I.P.C. defines stolen property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property", whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or out of India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

36. Section 411 IPC deals with dishonest receiving or retaining of stolen property and the essentials of which are mentioned below:

i) that some property was stolen;

ii) that the accused received or retained such property,

iii) that the accused received or retained it dishonestly;

iv) that the accused did so knowingly or having reason to believe that such property was stolen.

37. Therefore, to substantiate its case, the prosecution has to establish the four ingredients referred supra. Further, to sustain conviction of the accused for the offence punishable under Section 411 of IPC, it is the duty of the prosecution to prove the following ingredients as held by the Hon'ble Apex Court in a decision reported in Trimbak Vs. The State of Madhya Pradesh[8] wherein Their Lordships Justice Mahajan and Justice Bhagawati specified the following three ingredients:

1. that stolen property was in the possession of the accused.,

[8] AIR 1954 SC page 39

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.*

38. The learned Public Prosecutor contended that when the property was seized from the possession of the accused, a presumption under Section 114(a) of Evidence Act may be drawn, unless the accused explained his possession and by drawing such presumption, the accused are liable to be convicted for the offence punishable under Section 411 of IPC and conclude that the petitioners are the persons who received the stolen property with dishonest intention believing that M.O.1 is stolen property

39. Coming to the ingredients required to be established by the prosecution as held by the Hon'ble Apex Court in the judgment referred to supra i.e., *Trimbak Vs. The State of Madhya Pradesh*'s case, there must be satisfactory and cogent evidence to prove all the three ingredients.

40. The first ingredient to constitute an offence punishable under Section 411 of IPC is that, the stolen property was in the possession of the accused. Here, to prove that the property marked as M.O.1 and the property as the stolen property and in possession of the accused, the prosecution examined P.Ws.3 and 4, the investigating officers. PW-1 is the owner of M.O.1 from whose neck the chain was snatched while travelling in the auto along with other persons, similarly in other calendar cases. PW-1 identified M.O1 and other items of stolen goods in the open court as that of their property which was snatched from their possession her neck while she was travelling in the auto and at different places this was not disputed in the cross examination. Therefore, the first ingredient was satisfied to constitute an offence punishable under Section 411 IPC.

41. The second ingredient to constitute an offence punishable under Section 411 IPC is dishonestly receiving or retains any stolen property, knowing or having reason to believe the same to be stolen property. Here, the property seized from the possession of accused is M.O.1 and other items in other calendar cases and when the accused are not the owners of the property M.O.1 and other items in other calendar cases itself indicates the intention on the part of the accused and apart from that the petitioners pleaded that they purchased various items recovered from their possession including M.O.1 after sale of house property which remains unsubstantiated by producing any kind of evidence before the court at least by producing a document evidencing sale of property. Therefore, by drawing presumption under Section 114(a) of Evidence Act, when the petitioners failed to explain their possession, both the courts below rightly drawn the presumption under Section 114(a) of Evidence Act since the petitioners did not rebut the presumption though the presumption is optional.

42. The learned Public Prosecutor mainly contended that with the aid of Section 114(a) of Evidence Act, presumption that the person who is in possession of stolen property soon after commission of theft is presumed to be the receiver of stolen goods. So, to attract the presumption under Section 114(a) of Evidence Act, possession must be soon after commission of theft. That means, it must have recent possession.

43. Here, theft of M.O.1 was allegedly committed by the petitioners on 7.12.2014, the other items which are subject matter of two other calendar cases and those items were seized from the possession of the accused on 14.09.2015 at about 15.00 hours during

conducting of vehicle check. Therefore, the recovery was about an year after the commission of theft approximately and such recovery cannot be said to be recent possession to attract presumption under Section 114(a) of Evidence Act.

44. But, presumption under Section 114(a) of Evidence Act is an optional presumption and the court may draw such presumption and with the aid of such presumption record conviction of the accused. But, when the possession was not recent, not soon after commission of th theft, the presumption would disappear and on the strength of such presumption, the court cannot record a finding. Even in the absence of presumption under Section 114(a) of Evidence Act, if the prosecution is able to establish that the accused were found in possession of those stolen articles, and when they did not account for their possession, more particularly when PW-1 identified M.O1 and other items in two other calendar cases by PW-1 in the court, the court basing on the testimony of PWs.1, 3 and 4 can record its finding that the petitioners are the persons who are in possession of the stolen property.

45. In a decision reported in Karnal Singh Uttam Singh –Vs- State of Maharashtra[9], the Supreme Court is of the view that:

> *"The presumption from recent possession of stolen property is an optional presumption of fact under Section 114, Evidence Act. It is open to the court to convict an accused by using the presumption where the circumstances indicate that no other reasonable hypothesis except the guilty knowledge of the accused is open to the prosecution".*
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> *Where the explanation which the accused had given was good enough to raise serious doubts about the sustainability of a charge U/Sec.411 I.P.C., the accused was held entitled to an acquittal".*

46. On reading of the above decision, it is clear that presumption under Section 114(a) of Evidence Act is only an optional presumption

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[9] AIR 1976 SC 1097

and if the accused gave proper explanation as to how he came into possession of stolen goods, if it is reasonable, presumption under Section 114(a) of Evidence Act will disappear, since it is a rebutable presumption.

47. But here, the accused were found in possession of M.O.1 and other articles and their contention is that they sold the house and purchased those items is not plausible explanation for their possession since it was not substantiated by any material. But, the prosecution could establish that the petitioners were in possession of stolen property either by purchase or otherwise and in such a case, they are liable for prosecution.

48. Third ingredient to convict the accused for the offence punishable under Section 411 of IPC is that, the property was in possession of the accused is believed to be the stolen property or having knowledge that it is the stolen property. The property involved in the offence is gold and silver ornaments. Their contention is that they purchased the gold and silver articles by selling the house property. Admittedly, the accused are not the owners of the property, but when they are in in possession of the same, that must be stolen property belonging to others. So, direct knowledge can be attributable to the accused that the property must be stolen property. Taking into consideration of the facts of the case, when the accused are not claiming to be the owners of M.O.1 to 3 and other articles, it can safely be held that the accused are not the owners of the property M.Os.1 to 3 and recovery of M.Os.1 to 3 from the possession of the accused is proved.

49. Proof of possession of property is not sufficient to record conviction of the accused, unless it is coupled with dishonest

intention. The word “dishonestly” is defined under Section 24 of I.P.C. According to it, whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”. Even by applying the definition of ‘dishonestly’, it can safely be concluded that aid continuing in possession of any stolen property, certainly for their lawful gain and causing wrongful loss to the owner of the property i.e. PW-1 in all calendar cases.

50. In another judgment reported in Limbaji and others Vs. State of Maharashtra[10], the Division Bench of Apex Court while deciding the identical issue concluded that "When the accused was found in possession of stolen articles either by commission of theft or receiving articles knowing that it is to be the stolen property, the presumption of fact that within short time after the murder of deceased, the accused came into possession of ornaments removed from the person of deceased, and the accused offered one of stolen ornament for sale in the very same day, other stolen articles were found secreted to the knowledge of the accused, failure of accused to explain possession of stolen articles or how he had knowledge of concealment of the stolen property, the court can drawn a presumption under Section 114(a) of the Indian Evidence Act."

51. Here the proximity of time is too long but ignoring the presumption under Section 114(a) of Evidence Act, the court can record conviction of the accused if the prosecution is able to establish that M.Os.1 to 3 and other articles in the other calendar cases were seized from the possession of the accused as stolen property.

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[10] 2002 Crl.LJ. 590

52. The Apex Court in SANWAL KHAN v. STATE OF RAJASTHAN[11] held as under:

> "No *hard and fast rule can be laid down as to what inference should be drawn from a certain circumstance, where, however, the only evidence against an accused person is the recovery of stolen property and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murderer. Suspicion cannot take the place of proof."*

53. In WASIM KHAN v. STATE OF UTTAR PRADESH[12], the Apex Court held as under:

> "R*ecent and unexplained possession of the stolen property while it would be presumptive evidence against a prisoner on the charge of robbery would similarly be evidence against him on the charge of murder."* On the facts of that case this Court held that "*the appellant was rightly convicted of the offence of murder and robbery. But, apart from the possession of stolen property, there were other circumstances indicating that the appellant was guilty of murder and robbery. The circumstances were that the appellant in that case had travelled with the deceased on his bullock cart alone and the deceased never reached his home and was found murdered. The appellant was found in possession of the goods of the deceased three days after and the appellant made no effort to trace the whereabouts of the deceased or lodge information of his disappearance from the bullock cart."*

54. In a decision of the Rajasthan High Court in Bhurgiri v. The State[13], the Division Bench of Rajasthan High Court considered the scope of Section 411 IPC and held as follows:

> *"The next question is whether on this evidence Bhurgiri can be convicted for dacoity. The, recovery took place five days after the dacoity. It is not impossible that during that period the property might have passed from the dacoits to a receiver. Under these circumstances, we are of opinion that it would not be safe to convict Bhurgiri of dacoity on the evidence of this recovery alone. It would be more proper to convict him as a guilty receiver."*

55. In view of the law declared by the Apex Court and other High Courts, it is evident that the case of prosecution for the offence under Section 411 IPC can be recorded either with the aid of Section 114(a) of Evidence Act or based on evidence on record.

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[11] AIR 1956 SC 54
[12] 1956 Crl.L.J. 790
[13] (1954) Rajasthan 476

56. In the present facts of the case, though presumption under Section 114(a) of Evidence Act is ignored, still evidence on record could establish that the petitioners were found in possession of the stolen property M.O.1, thereby the conviction recorded by the trial court and confirmed by the appellate court for the offence punishable under Section 411 IPC cannot be disturbed by exercising limited power under Section 401 Cr.P.C. Therefore, I find no ground to interfere with the concurrent findings of fact recorded by the courts below.

57. Since I am in agreement with finding of trial court, I need not re-appraise each and every aspect in the evidence of prosecution witnesses as per principle laid down in the judgment reported in Girjanandni Devi Vs. Brijendra Narayan Choudhary[14], wherein the Hon'ble Apex Court held as follows:

> *"A judgment where an appellate Court agrees with the finding of the trial Court cannot be set aside merely because no reasons are given by the appellate Court. Where the appellate Court agrees with the findings of the trial Court, it is not necessary to repeat the narration of the evidence or to reiterate the reasons given by the trial Court."*

58. In view of the principle laid down in the above judgment, when the appellate court agreed with the finding of the trial court, there is no need to re-appreciate each and every aspect in the evidence of prosecution witnesses. Moreover, in view of limited scope of jurisdiction of this court, I need not re-appraise each and every aspect discussed by the trial court afresh to arrive at a different conclusion.

59. One of the contentions raised by the learned counsel for the petitioners is that the petitioners are in jail for more than 7 ½ months. But the learned Public Prosecutor opposed to release the petitioners reducing the sentence to the period already undergone on the

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[14] 1967 SC page 1124

ground that they involved in more than 10 crimes and recovered more than 80 items of gold and silver ornaments.

60. But, the appellate court took lenient view in reducing the sentence imposed by the trial court. For imposing sentence, the Court has to take into consideration the mitigating and aggravating circumstances which are mentioned below:

> *"The defense may put on evidence of mitigating factors that would support leniency in sentencing. Criminal statutes devote far less attention to factors that might mitigate a defendant's punishment, but courts have held that evidence relating to a defendant's character may be introduced provided that it is relevant to the sentencing process. Common mitigating factors include:*

- *Lack of a prior criminal record*
- *Minor role in the offense;*
- *Culpability of the victim;*
- *Past circumstances, such as abuse that resulted in criminal activity;*
- *Circumstances at the time of the offense, such as provocation, stress, or emotional problems that might not excuse the crime but might offer an explanation;*
- *Mental or physical illness; and*
- *Genuine remorse."*

61. In B.G. GOSAMI v. DELHI ADMINISTRATIOIN[15] the Apex Court laid down certain guidelines to impose sentence and observed as under:

> *"Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various consi- derations, which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act. which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal.*

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[15] 1973 AIR 1457

In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after 7 years of the annoy and harassment of these proceedings when he is also going to lose his job and to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs- 200/- to Rs. 400/-. Period of imprisonment in case of default will remain the same."

62. In view of the law declared in above judgment with regard to mitigating and aggravating circumstances, it is difficult to reduce the substantive sentence to the period already undergone i.e. 7½ months approximately. Therefore, I find no ground to interfere with the concurrent findings of both the courts below or at least to reduce the sentence of imprisonment by exercising power under Section 397 and 401 Cr.P.C. Since the substantive sentence imposed against the petitioners is totally commensurate with the gravity of the offence, in view of high rise of such offences of chain snatching in the entire State in recent past, if they are released reducing the sentence already undergone, there is every possibility of committing identical offences which would seriously affect the law and order and safety of women in the society at large. Therefore, I am not inclined to reduce the substantive sentence to the period already undergone in view of gravity and seriousness of crimes the petitioners committed.

63. However, it is brought to the notice of this Court one of the mitigating circumstance that the second petitioner/A-2 is pregnant of 7th months and there is likelihood of delivering a child within few months. Therefore, taking into consideration of the present condition of the second petitioner, which is a mitigating circumstance, the sentence imposed against the second petitioner is reduced to NINTE MONTHS giving set off under Section 428 Cr.P.C. to the punishment already undergone.

64. In view of foregoing discussion, I find no ground to interfere with the fact findings recorded by both Courts below finding the petitioners 1 and 2 guilty for the offence punishable under Section 411 IPC.

65. In the result, the conviction and sentence recorded by the Principal Sessions Judge, Warangal vide judgments dt.24.05.2017 in Crl.A.No.94 of 2016, dt.23.05.2017 in Crl.A.No.91 of 2016, dt.25.05.2017 in Crl.A.No.96 of 2016, dt.23.05.2017 in Crl.A.No.92 of 2016, dt.24.05.2017 in Crl.A.No.93 of 2016, dt.29.05.2017 in Crl.A.No.99 of 2016, and dt.29.05.2017 in Crl.A.No.100 of 2016 respectively against the first appellant/A-1 for the offence punishable under Section 411 I.P.C. are hereby confirmed while confirming the conviction recorded by the Principal Sessions Judge against the second appellant/A-2 for the offence punishable under Section 411 I.P.C. However, the sentence of imprisonment of one year imposed by the Principal Sessions Judge against the second appellant/A-2 is reduced to NINE MONTHS while maintaining the fine. The period of detention already undergone by the second appellant/A-2 during the course of investigation, trial and after conviction shall be given set off under Section 428 Cr.P.C. The sentence imposed against the petitioners 1 and 2/A-1 and A-2 in all these revision cases shall run concurrently.

66. Accordingly, criminal revision cases are partly allowed.

Miscellaneous petitions, if any, pending in these revision cases shall stand closed.

M.SATYANARAYANA MURTHY,J

DATE:16-08-2017
ccm

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL. R.C. NO.1767 OF 2017,
CRL. R.C. NO.1769 OF 2017,
CRL. R.C. NO.1773 OF 2017,
CRL. R.C. NO.1788 OF 2017,
CRL. R.C. NO.1765 OF 2017,
CRL. R.C. NO.1774 OF 2017,
AND
CRL. R.C. NO.1775 OF 2017

Date:16.08.2017

ccm