

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1709 of 2006

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of Cr.P.C, is filed questioning the propriety and legality of the Judgment dt.18.09.2006 in Criminal Appeal No.37 of 2005 passed by II Additional Sessions Judge at Waranagal, confirming the conviction and sentence passed against the petitioners for the offence punishable under Section 411 IPC by the Judicial First Class Magistrate, Jangaon by Calendar and Judgment in C.C.No.548 of 2001 and sentenced them to undergo RI for a period of six months and to pay a fine of Rs.100/- each with default sentence.

Pw.1/Bavupalli Vijayakumar lodged a complaint with the police alleging that on 05.07.2001 while was returning on his Hero Honda motor cycle to Mothkur village via Bachannapet and when he was two kilometers away from Bachannapet after crossing the electric sub station at about 9.00 am, the accused armed with knives, sticks etc., intercepted him and robbed his red colour Hero Honda bearing No. E.No.00413-E, 14390, Chasis No.OOG-14F 09357, which is worth of Rs.40,000/-, and thereafter he searched for his motor cycle in Nalgonda and Hyderabad, but his efforts were in vain. On the strength of the complaint, a case in Cr.No.25 of 2001 was registered for the offence punishable under Section 392 IPC and issued FIR.

During investigation, the police, based on the confession statement of the accused, recovered Mo.1 from their joint possession. After completion of investigation, the Police filed charge sheet before the concerned Court.

The Court took the case on file under Section 392 IPC and after securing the presence of accused, framed a charge under Section 392 r/w 34 IPC, read over and explain to them in Telugu, they pleaded not guilty and claimed to be tried.

During trial, on behalf of prosecution, Pws. 1 to 7 were examined and EXs. P.1 to P9 and Mos. 1 to 3 were marked. After closure of prosecution evidence, the accused were examined under Sections 313 Cr.P.C., explaining incriminating material that appeared against them in the testimony of prosecution witnesses, they denied the same and reported no defence.

Upon hearing both the counsel, the trial Court found the accused guilty for the offence 411 IPC, convicted and sentenced to undergo SI for a period Six Months and to pay a fine of Rs.100/- each, while finding them not guilty for the offence punishable under Section 392 IPC.

Aggrieved by the conviction and sentence passed in C.C.No.548 of 2001 by the Judicial First Class Magistrate, Jangaon, the accused preferred an appeal, which ended in dismissal, confirming the conviction and sentence passed by the trial Court.

Aggrieved by the concurrent fact findings recorded by the Courts below, including conviction and sentence, the present revision is filed mainly on the ground that the revision petitioners did commit no offence and Mo.1—Hero Honda motor cycle, was not recovered from the possession of revision petitioners. It is further alleged that Pw.5 arrested the petitioners on 11.07.2001 while they were traveling on Mos.1—Motor cycle and on interrogation and confession by the revision petitioner, the Mo.1 was recovered, but Mo.1 was not recovered from the joint possession of petitioners, and both the Courts

committed grave error in finding the accused guilty and convicted the accused for the offence punishable under Section 411 IPC.

Though this revision was filed by the petitioners/accused represented by his counsel, Sri V. Ramesh Kumar, but he neither appeared before this Court nor got it represented through any other counsel. In such case, this Court cannot dismiss the Criminal Revision Case for default. But, this Court is entitled to decide the revision verifying the record as held in *Misha Sharma v. Vinod Kumar Sharma*¹, wherein it is made clear that a revision petition cannot be dismissed for default. Even if the petitioner or his advocate does not appear the court shall examine the record and decide the revision on merits.

Therefore, persuaded by the law declared by Delhi High Court, I would like to proceed with the matter after verifying the material available on record.

Heard, learned Public Prosecutor appearing for the State of Telangana.

Before advertng to the facts of the present case, it is apposite to examine the scope of Revision under Sections 397 and 401 Cr.p.C. when concurrent the Courts below recorded concurrent fact findings.

The jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is Limited. Section 401 Cr.P.C 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 the other hand

¹ 1990 Cr.LJ. (NOC) 57 (Del.)

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*². 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*³. 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 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;

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.

Thus, the powers of the High Court are limited, this Court cannot interfere with the concurrent fact findings recorded by the Courts

² (1964) 1 Cr.L.J.443 (SC)

³ 48, Cr.L.J.173,174(pat)

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 the Apex Court in *S.P.S.Jayam and Company V. Nehrusadan*⁴.

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*⁵, as the jurisdiction of this Court is limited to question of law and not a question of fact. Normally, this Court would not interfere with the concurrent findings unless the fact findings recorded by the Courts below are manifestly perverse or apparently erroneous.

The main ground for finding the petitioners guilty by both Courts was seizure of Mo.1 from their possession. Exs. P.4 to P.6 are the confession statements leading to discovery and seizure panchanama, which are admissible in evidence under Section 27 of Indian Evidence Act since it is an exception to Section 25 of Indian Evidence Act, as part of the statement, which leads to discovery of any material is admissible. Therefore, on the basis of Exs. P.4 to P.6 dt. 11.07.2001 coupled with the evidence of mediators in whose presence the statements of Exs. P.4 to P.6 were recorded and seizure of Mo.1 was done under cover of panchanama, the Courts below believed that Mo.1 was recovered from the possession of petitioners while they were traveling on the same. Admittedly, Pw.1 is the owner of Mo.1, but the

⁴ 1977 SC 1621

⁵ (1986) 3 SCC 445

respondents are also not claiming that they are owners of Mo.1. However, when recovery of Mo.1 is proved by adducing cogent and sufficient evidence by the prosecution, the Court, in view of Section 114 (a) of the Indian Evidence Act drawn a presumption that the persons, who are in possession of stolen goods soon after the theft is thief or receiver of the goods, knowing them to be stolen with dishonest intention, unless he can account for his possession. But here, the petitioners are having of Mo.1-Hero Honda i.e., stolen goods, in their possession jointly. In such a case, while the prosecution able to prove Mo.1-Motor Cycle is recovered from the possession of the petitioners under Exs. P.1 to P.6 in the presence of mediators, the Court shall draw a presumption under Section 114 of Evidence Act, which is rebuttal. But, the counsel appearing before the Court below failed to dispel the presumption under Section 114 of Evidence Act by eliciting anything in the cross examination of prosecution witnesses. In the absence of any explanation for their possession of Mo.1, the Courts below drawn a presumption under Section 114-A of the Indian Evidence Act and convicted and sentenced the accused for the offence punishable under Section 411 of IPC.

A test identification parade under Section 9 of Evidence Act was held in the presence of mediators, strictly adhered to Section 35 of Criminal Rules of Practice. Mo.1 was identified as that of the property robbed from the possession of Pw.1. Therefore, this is a strong circumstance to believe that Mo.1 was robbed from the possession of Pw.1 by unknown persons and the petitioners are found in possession of such stolen goods i.e., Mo.1. Moreover, identification of Motor Cycle is not a difficult task because of registration number and chassis number. Therefore, basing on the evidence on record, both the trial

and Appellate Court found the accused guilty for the offence punishable under Section 411 IPC.

In view of the concurrent fact findings recorded by the Courts below and limited jurisdiction of this Court under Sections 397 and 401 Cr.P.C., I find no ground to interfere with the concurrent fact findings recorded by the Courts below. Consequently, the revision is devoid of merit and is liable to be dismissed.

Accordingly, this Criminal Revision Case is dismissed.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand dismissed.

Date: 21-09-2017
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M. SATYANARAYANA MURTHY, J



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CrI.R.C. No.1709 of 2006

Dt. 21-09-2017

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