

HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No.8204 of 2011

ORDER:

1. This Criminal Petition is filed by the petitioner-accused No.3 under Section 482 Cr.P.C. seeking to quash the proceedings against him in C.C.No.1364 of 2009 on the file of the II Additional Chief Metropolitan Magistrate, Hyderabad.

2. The main contention of the petitioner is that he was arrayed as accused No.3 on the basis of confession made by accused Nos.1 and 2 viz., Syed Muzammil, S/o Syed Azam Sahab and Shaik Imran, S/o Shaik Ahmed respectively in Crime No.277 of 2009 on the file of Pahadishareef Police Station, Cyberabad, and a case was registered against the petitioner in Crime No.413 of 2009, which is subsequently numbered as C.C.No.1364 of 2009. It is further contended that no property was seized from the petitioner even as per the confession made by the co-accused.

3. The learned Public Prosecutor for the State of Telangana contended that there is a confession of the petitioner-A3 before M. Rajesh and Amba Das, who are panchas for the confessional panchanama.

4. A perusal of the record goes to show that in C.C.No.1364 of 2009, the petitioner is arrayed as accused No.3 on the basis of confession made by co-accused, who are arrayed as A1 and A2 in this case, and the said confession was made in Crime No.277 of 2009 on the file of the Pahadishareef Police Station, registered for the offence under Section 392 r/w 411 IPC.

5. The complainant stated that some unknown persons came on her back on a black colour Pulsar and snatched away gold pustelatadu weighing about 3.5 tulas from her neck and absconded towards CBS. In the statement under Section 161 Cr.P.C., the complainant stated that she

can identify her stolen mangalasutram and the accused persons, if shown to her. In the charge sheet, the investigating officer i.e., Sub-Inspector of Police, Afzalgunj, Hyderabad clearly stated that the stolen property was not recovered as the petitioner-accused No.3-Nomaan Khan confessed that he lost the stolen golden chain while he was passing to his residence on bike after committing the offence. Accordingly, there is no recovery of the property. The confession of the petitioner-accused No.3 before the panchas cannot be used as evidence against the maker.

6. Even though in the First Information Report, the complainant stated that she can identify the stolen gold Mangalasutram, if shown to her, but the police failed to conduct the test identification parade soon after arrest of the petitioner. More so, there is no recovery of the gold chain to connect the petitioner-accused No.3 with the offence. In the absence of any such stolen property recovered from the possession of the petitioner-accused No.3 and the test identification parade, the petitioner-accused No.3 cannot be prosecuted on the basis of confession of A1 and A2. Therefore, I am of the considered view that the trial Court cannot proceed against the petitioner-accused No.3 and the proceedings against the petitioner-accused No.3 in the above C.C. are liable to be quashed.

7. Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner-accused No.3 in C.C.No.1364 of 2009 on the file of the II Additional Chief Metropolitan Magistrate, Hyderabad are hereby quashed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N. BALAYOGI

Date: 4th October, 2017
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