

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2388 of 2017

ORDER:

The revision petitioner/appellant/accused was convicted under Section 248(2) of the Criminal Procedure Code, 1973 for the charge under Section 420 IPC and sentenced to undergo two years simple imprisonment and to pay a fine of Rs.1,000/- by the learned I Additional Judicial Magistrate of First Class, Mancherla, erstwhile Adilabad District. When he preferred the appeal in CrI.A.No.124 of 2014, the learned Principal Sessions Judge, Adilabad, by his judgment, dated 08.12.2016, confirmed the conviction but, however, modified the sentence of imprisonment from two years to that of one year and also confirmed the fine amount. Questioning the same, the petitioner approached this court by this revision.

2. Heard Sri Harinadh Nidamanuri, learned counsel for the petitioner, and the learned Additional Public Prosecutor appearing for the State of Telangana.

3. The relevant facts, to know as to whether there is any patent illegality in the findings recorded and the conviction arrived at by the courts below, require advertence.

PWs.1 and 2 are the husband and wife. Somehow, PW2 was affected with ailments and was suffering with epilepsy. Though, efforts were made to get treated, her health could not be cured. When they were placed in such situation, his relation,

who is the present revision petitioner, some how, managed to impress upon them stating that he can cure Vishnupriya, wife of PW1, by performing some poojas and made them believe. On which they parted with Rs.30,000/- in the first instance and later paid some amounts on different occasions amounting to Rs.4 lakhs and 5 tulas of gold. But despite the same, the same ailment continued and thus they found that the revision petitioner cheated them. Thereby, a complaint was lodged and a Crime was registered and later charge sheet was laid. After observing due formalities the learned Magistrate proceeded with trial, before whom PWs.1 to 8 were examined and Exhibits P1 to P6 were marked on behalf of the prosecution.

4. The learned Magistrate on the basis of the evidence of PWs.1 to 4 having held that the identity of the revision petitioner was clearly established; further their evidence would establish that the revision petitioner performed poojas in the house of PWs.1 and 2 and he has taken not only cash but also gold ornaments on the pretext of performing poojas; that their testimony cannot be discredited; that the property-MO1 was recovered upon the confessional statement of PW2, which were Identified by her as belongs to her; that the prosecution could prove the charge beyond all reasonable doubt; convicted the revision petitioner by inflicting the aforesaid punishment.

5. On appeal, the learned appellate judge once again having gone through the evidence of PWs.1 to 4 held that their evidence would clinchingly establish commission of offence by the accused

and that the accused has taken not only cash but also gold ornaments on the pretext of performing poojas; that though, the mediators P.Ws.5 and 6 did not support the case of the prosecution, they admitted their signatures on the mediators reports; that the recovery of MO1 is proved, as identified by PW2, and also as per the evidence of PW8, Investigating Officer; and accordingly arrived at the conclusion that the findings recorded by the learned trial court cannot be upset. Therefore, he confirmed the conviction, however, took some sort of lenient view by modifying the sentence of imprisonment of two years to that of one year.

6. The learned counsel for the revision petitioner would contend that there has been civil disputes between the parties and that has been the reason for the revision petitioners are falsely implicated and the entire story of the prosecution is unbelievable and it is make believe story and seeks to set aside the conviction recorded, more particularly, when mediators have not supported the case of the prosecution.

7. However, the learned counsel also would submit that the petitioner has been serving out the sentence from 17.08.2017 onwards having put in prison for a considerable time elapsed and seeks to take a lenient view by showing mercy. It appears that no amount was realised or recovered from the revision petitioner and only gold bangles were recovered belonging to PW2. Learned counsel would submit that the revision petitioner has

got five children and he is the only bread earner of the family and seeks to show mercy upon him.

8. Keeping in view that the accused is not a stranger, but some how wanted to exploit the situation taking the undue advantage of the ailment of PW2 and he is not a hard core criminal and professional, it is desirable to take a lenient view. Hence, the period of simple imprisonment of one year, inflicted by the appellate court by way of modification, is further reduced to six months simple imprisonment. To that extent only the present criminal revision case is liable to be allowed.

9. Accordingly, the Criminal Revision Case is partly allowed confirming the conviction of the petitioner, for the offence punishable under Section 420 IPC, recorded by the I Additional Judicial Magistrate of First Class, Mancherial, dated 18.11.2014, in C.C.No.434 of 2008, and as confirmed by the Principal Sessions Judge, Adilabad, vide judgment, dated 08.12.2016, in CrI.A.No.124 of 2014, but modifying the sentence from one year Simple Imprisonment to six (6) months Simple Imprisonment, while maintaining the fine amount with default sentence. The period of pre-trial detention, if any, shall also be given set off, as already observed by the courts below.

In case, the petitioner has already undergone the sentence of imprisonment inflicted, he shall be released forthwith, if he is not required in any other case.

As a sequel, the miscellaneous applications, if any, shall stand closed.

JUSTICE A.SHANKAR NARAYANA

November 23, 2017
LMV

