

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2450 of 2017

ORDER:

Petitioner/accused in C.C.No.98 of 2015 on the file of Additional Judicial Magistrate of First Class, Kavali, SPSR Nellore District, preferred this revision challenging the conviction and sentence imposed by the trial Court vide judgment, dated 28.09.2015 as confirmed by IV Additional District and Sessions Judge, Nellore, in CrI.A.No.341 of 2015 vide judgment, dated 18.08.2017, for the offence punishable under Section 411 IPC.

Petitioner/accused allegedly committed theft of electric motor worth Rs.20,000/- from the land of neighbouring ryot, and based on Ex.P.1 – report, dated 20.08.2014, the same was recovered under the cover of panchanama – Ex.P.2 in the presence of mediator, P.W.2, and after completion of investigation, a charge sheet was filed before the Magistrate, who in turn, took the case on file for the offence punishable under Section 379 IPC, alternatively, for the offence punishable under Section 411 IPC. After securing the presence of petitioner, the trial Court framed charge for the offence punishable under

Section 379 IPC alternatively Section 411 IPC, read over and explained to him in Telugu but he pleaded not guilty and claimed to be tried.

During trial, on behalf of prosecution, P.Ws.1 to 3 were examined and Exs.P.1 to P.4 and M.O.1 were marked. After closure of evidence, petitioner/accused was examined under Section 313 Cr.P.C. explaining the incriminating circumstances appeared in the testimonies of P.Ws.1 to 3 and he denied and reported no evidence. Upon hearing arguments of both counsel, the trial Court found petitioner/accused guilty for the offence punishable under Section 411 IPC and convicted and sentenced him to undergo Simple Imprisonment for a period of six months and to pay fine of Rs.2,000/- with default sentence.

Aggrieved by the conviction and sentence imposed by the trial Court, petitioner/accused preferred Crl.A.No.341 of 2015 which ended in dismissal vide judgment, dated 18.08.2017 passed by IV Additional District and Sessions Judge, Nellore.

The present revision is filed questioning the quantum of sentence since the value of property allegedly found in possession of petitioner is Rs.20,000/- but imposition of sentence of imprisonment is not in commensurate with the gravity of

offence and with a prayer to pass appropriate orders setting aside the sentence of imprisonment.

During the course of hearing, counsel for petitioner reiterated the contentions and informed this Court that petitioner is in jail for the last 28 days after disposal of the appeal and before enlarging him on bail, he was in judicial custody for 7 days.

The total period of judicial custody and the imprisonment already underwent by petitioner is more than 35 days. The maximum sentence prescribed for the offence punishable under Section 411 IPC is 3 years or with fine or with both. M.O.1 is only worth Rs.20,000/- and was already ordered to be returned to P.W.1.

Petitioner had already undergone imprisonment for more than a month. Therefore, taking into consideration the facts and circumstances of the case and the gravity of offence, sentence of imprisonment imposed upon petitioner by the trial Court as confirmed by the lower appellate Court is modified to the sentence already undergone by him, while maintaining fine amount of Rs.2,000/-.

With the above modification, Crl.R.C. is disposed of. Petitioner shall be set at liberty henceforth since he already paid fine amount vide counterfoil, dated 28.09.2015 of Additional Judicial Magistrate of First Class, Kavali.

Consequently, pending Miscellaneous Petitions, if any, shall stand closed.

M.SATYANARAYANA MURTHY, J

13th SEPTEMBER, 2017.

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