

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No. 1972 of 2017

ORDER:

This Criminal Revision Case is filed under Sections 397 & 401 of Cr.P.C questioning the propriety, legality and regularity of the judgment dated 22.06.2017 passed by the III Additional District Judge, Kakinada, East Godavari District, in CrI.A. No.425 of 2014, whereby and whereunder the conviction sentence passed by the Special Mobile Judicial Magistrate of First Class, Kakinada vide judgment dated 20.10.2014 in C.C. No.39 of 2010 holding the petitioners/ accused Nos.1 to 3 guilty for the offences punishable under Sections 170, 384 r/w 34 IPC and convicted u/s 248 (2) Cr.P.C, was confirmed while dismissing the appeal. Accused Nos.1 to 3 are admonished for the offence under Section 384 r/w 34 IPC. Accused Nos.1 to 3 are sentenced to undergo simple imprisonment for a period of three months each and they shall pay a fine of Rs.2,000/- each and in default of payment of fine, the accused Nos.1 to 3 shall undergo simple imprisonment for a period of one month each for the offence under Section 170 r/w 34 IPC.

The case of the prosecution is that on 19.02.2010 at about 18.00 hours, PW.1—Senapathi Siva Kumar, LW.2—Adabala Sandeep and PW.2—Guthula Anand Kiran @ Anand have been playing cards for time pass in the house of LW.4—Chinta Syam Sunder, who is a friend of PW.1 situated at Rayudupalem Village, Kakinada Rural Mandal. All the accused went there stating that they are police personnel and forcibly taken gold chain weighing about 8.900 grams and Micromax X 211 cell phone with dual sim

with dial Nos.9246617811 and 9603273344 belonging to PW.1, Samsung Virgin Mobile with sim dial No.92933331117 belonging to LW.2 (Adabala Sandeep) and Sony Ericsson F 305 Cell phone with sim dial No.9440481236 belonging to PW.2 from PW.1, LW.2 and PW.2 and demanded for payment of Rs.10,000/-, otherwise threatened them to book a case against them. When PW.1, LW.2 and PW.2 informed that they did possess amount with them, the accused informed to PW.1, LW.2 and PW.2 that if they give Rs.10,000/- at APSP, Kakinada, they would handover the gold chain and cell phones otherwise book a case against them and went away. Thereupon, PW.1, LW.2 and PW.2 came to know that the accused are not police personnel and lodged a complaint in Sarpavaram Police Station.

On the strength of the said complaint, a case was registered in Crime No.40 of 2010 for the offences punishable under Sections 170 and 384 IPC by the Sarpavaram Police Station on 19.02.2010 at 19.00 hours and investigated into the case. During investigation, PW.4 examined PW.1, LW.2 and LW.4 and recorded their statements under Section 161 Cr.P.C, inspected the scene of offence and drawn its rough sketch on 19.02.2010, 20.02.2010 and 21.02.2010. PW.4 arrested A.1 to A3 on 19.02.2010 at 20.00 hours at 3rd APSP, Kakinada, got their confessional statements drafted by the mediators LW.5—Vasamsetti Madhavarao and PW.3—Chebrolu Nataraj and seized the gold chain weighing about 8.900 grams and Micromax X 211 cell phone with dual sim Nos.9246617811, 9603273344 from A.1, Samsung Virgin Mobile dial No.92933331117 from A.2 and Sony Ericsson F 305 cell phone

with sim dial No.9440481236 from A.3 in the presence of mediators under the cover of mediators report, produced the accused Nos.1 to 3 to the Court for judicial remand. LW.8—Sri B.S.Singh, Assistant Sub-Inspector of Police, Sarpavaram P.S., verified the investigation done by PW.4. After completion of investigation, filed charge sheet before the Judicial Magistrate of First Class, Kakinada for the offences punishable under Sections 170 and 384 read with Section 34 IPC against accused Nos.1 to 3.

Upon securing the presence of the accused, the copies of the case documents were furnished under Section 207 Cr.P.C in the trial Court, framed charges under Section 239 Cr.P.C against the accused for the offences punishable under Section 170 and 384 IPC and read over and explained to them in telugu and they pleaded not guilty and claimed to be tried.

During trial, on behalf of prosecution PWs.1 to 4 were examined and got marked Exs.P1 to P4 and M.Os.1 and 2.

After closure of the prosecution side evidence, A.1 to A.3 were examined under Section 313 Cr.P.C and the incriminating is read over and explained to them in Telugu. They denied the same and reported no defence evidence.

After conducting the trial, the Special Mobile Judicial Magistrate of First Class, Kakinada by the aforesaid judgment dated 20.10.2017 found A.1 to A.3 guilty for the offence punishable under Sections 170 and 384 r/w 34 IPC and convicted them u/s 248 (2) Cr.P.C as stated above.

Aggrieved by the said conviction and sentence under the judgement dated 20.10.2014 in C.C. No.39 of 2010 passed by the Special Mobile Judicial Magistrate of First Class, Kakinada, the accused Nos.1 and 2 filed the Criminal Appeal No.425 of 2014, which was ended in dismissal by judgment dated 22.06.2017 confirming the judgment in C.C. No.39 of 2010 dated 20.10.2014 passed by the Special Mobile Judicial Magistrate of First Class, Kakinada for the offence punishable under Section 170 read with 34 IPC.

Aggrieved by the concurrent findings of fact recorded by both the Courts below and sentence imposed against the petitioners, the present revision is filed on various grounds, mainly, on the ground that the offence under Section 170 IPC is not established and prosecution failed to establish impersonation and acting as police officials and threatening PWs.1 to 4 snatching away gold chain, cell phones etc., was not established but there are material contradictions in the evidence of prosecution but the trial Court and appellate Court failed to appreciate and committed an error in finding the accused guilty for the offences punishable under Sections 384 and 170 read with 34 IPC and that the substantive sentence of imprisonment imposed against them is highly excessive and not commensurate with the gravity of offence committed and hence prayed to set-aside the same.

At the stage of admission, learned counsel for petitioner, while reiterating the contentions raised in the grounds of revision before this Court sought to convert the sentence imposed against

the petitioners into one of simple imprisonment for three months by taking a lenient view.

The present revision is filed under Sections 397 and 401 Cr.P.C. under which the jurisdiction of this court is limited. [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 clauses, but are merely indicative. Each case would have to be determined on its own merits.

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.

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.

The jurisdiction of the Court under [Section 397](#) can be exercised so as to examine the correctness, legality or propriety 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, propriety 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, as held by the Apex Court in the decision mentioned supra.

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 corrupt miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or failure to take proper precaution 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 misdirections 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 application by a complainant, exercise the powers of an appellate

¹ (1964) 1 Cr.L.J. 443 (SC)

² 48, Cr.L.J 173, 174 (Pat)

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, but such power cannot be exercised. 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.

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.

³ 1977 Cr.L.J. 1101

⁴ (1986) 3 SCC 445

Unless it is found that there is an error in the judgments of both the Courts below, this Court cannot interfere with the findings in such judgments. Keeping in view of the limited jurisdiction of this Court, I would like to decide the present revision at the stage of admission.

The main contention of the petitioners is that the accused were acted as police officials and demanded for payment of Rs.10,000/-, while snatching the gold chain and cell phones referred supra, which was established by prosecution by examination of PWs.1 to 3 as eye witnesses and, their evidence is worthy of credence. The trial Court and the lower appellate Court find no inconsistency in their evidence. According to Section 170 IPC whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which extend to two years, or with fine or with both.

In the present case, the petitioners, who are not constables admittedly, representing themselves to be police constables, snatched away a gold chain, cell phones of PWs.1 and 2 and demanded for payment of Rs.10,000/- and threatened to book a case against them in the event of failure to pay the amount. The said fact was established before the trial Court by examining the PWs.1 to 4, including the Investigating Officer, in which case, the

fact finding recorded by the trial Court based on evidence as confirmed by the lower appellate Court cannot be interfered by this Court, while exercising the limited jurisdiction under Sections 397 and 401 Cr.P.C as the petitioners failed to show any manifest illegality or irregularity or apparent error in appreciation of evidence by both the Courts below. Therefore, I find no ground to interfere with the concurrent finding of fact recorded by both the Courts below, warranting interference by this Court.

Coming to the punishment imposed by the trial Court, as confirmed by the lower appellate Court and for reduction of the same is concerned, the main contention of the petitioners is that they are aged about 36 and 40 years and they are living by doing coolie work and requested this Court to show indulgence and limit the sentence to that of fine, instead of sentence of imprisonment. But it is to be seen that the offence committed by the petitioners is grave in nature as they pretend themselves that they are police constables and snatched away the gold chain and cell phones and demanded for payment of Rs.10,000/-, and if such act is encouraged, it would lead to serious consequences, as the petitioners are aware that they are not police officials, but they made an attempt to collect Rs.10,000/- from PWs.1 to 3 and others, the punishment prescribed for such offence is a maximum of two years imprisonment or with fine or both. But the trial Court and appellate Court took a lenient view and ordered simple imprisonment for three months and a fine of Rs.2,000/- each and hence this Court is not inclined to reduce the sentence, since it would amount to flout sentence and it would not commensurate

with the gravity and seriousness of the offence and imposing such minimum sentence would result in miscarriage of justice, no mitigating circumstances are brought to the notice of this Court or before the Trial Court.

Time and again, the Supreme Court pointed out the irregularities in imposing punishment and sentence based on gravity and seriousness of the offence. The mitigating circumstances are:

1. The manner and circumstances in and under which the offence was committed, for example extreme mental or emotional disturbance or extreme provocation in contradiction to all these situation in normal course
2. The age of the accused is a relevant consideration but not a determinative factor by itself.
3. The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.
4. The condition of the accused shows that he was mentally defective and the said defect impaired his capacity to appreciate the circumstances of his criminal conduct.
5. The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving ties to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.
6. Where the court upon proper appreciation of evidence is of the view that the crime was not

committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

7. Where it is absolutely unsafe to rely upon the testimony of a sole eye witness though prosecution has brought home the guilt of the accused.

All the above mitigating circumstances are taken into consideration, the petitioners are aware that they are not police constables, however, on knowing the factum of PW.1—Senapathi Siva Kumar, LW.2—Adabala Sandeep, PW.2—Guthula Anand Kiran @ Anand had been playing cards in the house of LW.4, they hatched a plan and went to the house of LW.4 and found that they are playing cards and snatched away gold chain, cell phones and demanded for payment of Rs.10,000/- and if the petitioners are left with a flee bite sentence, there is every possibility of repeating such crimes and it will lead to encouraging the offences. Therefore, it is difficult to take a lenient view against the petitioners, since no mitigating circumstances are brought to the notice of this Court so as to reduce the sentence of imprisonment imposed by the trial Court, as confirmed by the lower appellate Court. Hence, I find no ground to reduce the sentence further, since the trial Court and the lower appellate Court took a lenient view and imposed minimum sentence of simple imprisonment for three months. Consequently, I find no ground to reduce the sentence further and the present revision is deserves to be dismissed.

Accordingly, the Criminal Revision Case is dismissed at the stage of admission, confirming the order passed on 22.06.2017 in

Crl.A. No.425 of 2014 by the III Additional District Judge,
Kakinada, East Godavari District.

Consequently, miscellaneous petitions, if any, pending in
this revision, shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt.09.08.2017
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