

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.2560 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 & 401 Cr.P.C , questioning the concurrent fact findings recorded by both the Trial Court and Appellate Court in C.C.No.281 of 2015 and CrI.A.No.37 of 2017 respectively, whereby, the conviction recorded by the Trial Court was confirmed and partly allowed by the Appellate Court by reducing the substantive sentence of imprisonment from one year to six months rigorous imprisonment for the offence punishable under Section 379 I.P.C.

The petitioner is the accused before the Trial Court and appellant in the Appellate Court, who allegedly committed theft of an auto bearing No.AP-22-W-7079 worth Rs.40,000/- belonging to P.W.1.

The case of the prosecution in brief is that, on 23.06.2015 at 11:00 hours, the Inspector of Police along with others were conducting vehicle check at Boyapally gate, Mahabubnagar, intercepted an auto and inquired about the registration of the vehicle bearing No.AP-22-W-7079. The petitioner/accused failed to produce necessary documents pertaining to the registration of the vehicle and immediately, he secured the presence of two mediators and in their presence, the confession of the petitioner/accused leading to discovery was recorded and the auto was recovered in the presence of the said mediators under the seizure panchanama marked as Ex.P-3, which belonged to the complainant, who lodged

a complaint on 22.06.2015 vide Ex.P-1 alleging that, at about 4:00 PM, he drove his auto and parked the auto at Z.P. Ground under the tree and went into the Z.P. office. After half an hour, he came to his auto parking place and found his auto bearing No.AP-22-W-7079 was missing and lodged a complaint with the Inspector of Police, P.S II Town, Mahabubnagar.

Basing on the above complaint, the Sub Inspector of Police, registered a case in Cr.No.173 of 2015 and issued F.I.R Ex.P-4 and crime details form Ex.P-2. Only during investigation, after registration of crime as Ex.P-4, the vehicle was seized. Therefore, the petitioner/accused was found in possession of the auto bearing No.AP-22-W-7079 belonging to P.W.1 and the petitioner allegedly committed theft.

After completion of investigation, the police filed charge sheet before the Judicial Magistrate of First Class at Mahabubnagar and the same was taken on file by securing the presence of the petitioner/accused by following necessary procedure under Section 207 Cr.P.C after appearance of the accused, copies of documents furnished to him. Further a charge sheet for the offence against the accused punishable under Section 379 I.P.C, was framed, read over and explained to him in Telugu he pleaded not guilty and claimed to be tried.

During trial, on behalf of the prosecution P.Ws 1 to 6 were examined and marked Exs.P-1 to P-4. After closure of the complainant's evidence, the accused was examined under Section 313 of Cr.P.C. explaining incriminating material appeared against him; he denied the same and reported no defence.

Upon hearing argument of both the counsel, the Trial Court found the accused guilty and sentenced him to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.500/- with default sentence.

Aggrieved by the conviction sentence passed by the Trial Court in C.C.No.281 of 2015, the petitioner/accused preferred an appeal in Crl.A.No.37 of 2017 before the Principal Sessions Judge, Mahabubnagar, whereby, the Appellate Court confirmed and partly allowed the appeal, reducing the substantive sentence of imprisonment from one year to six months rigorous imprisonment for the offence punishable under Section 379 I.P.C. Assailing the concurrent fact findings of both the Trial Court and the Appellate Court, the present revision is filed on the ground that there is discrepancy in the evidence of P.Ws 1 & 4 with regard to seizure of the vehicle i.e. auto from the petitioner/accused and the Trial Court and the Appellate Court failed to appreciate the contention raised with regard to discrepancy in the evidence of P.W.s 1 & 4 regarding seizure of the vehicle.

It is contended that the prosecution examined only those who are cordial with the investigating agency and on the strength of such evidence, both the Courts below ought not to have recorded such fact findings that the petitioner committed theft of auto bearing No.AP-22-W-7079 and thus, both the Courts below have committed a grave error and prayed to set-aside the same.

At the stage of admission, learned counsel for the petitioner Sri Akula Shyam Sunder, who reiterated the contentions raised in the grounds of revision, contended that the petitioner was not

found in possession of stolen property and thereby, he is not liable for punishment. But, both the Courts below committed a grave error in appreciation of evidence and requested this Court to set-aside the conviction and sentence passed by the Trial Court and confirmed the conviction and modified the sentence by the Appellate Court.

Whereas, the learned Public Prosecutor for the State of Telangana supported the concurrent fact findings recorded by both the Trial Court and the Appellate Court, while contending that this Court is incompetent to re-appreciate the entire evidence, since the powers of revision of this Court is limited to the question of law. Apart from that, the learned Public Prosecutor would contend that, normally the Courts cannot interfere with the concurrent fact findings recorded by both the Courts below while exercising power under Sections 397 & 401 Cr.P.C and requested this Court to confirm the conviction sentence passed by the Trial Court and confirmed by the Appellate Court, reducing the substantive sentence of imprisonment from one year to six months rigorous imprisonment for the offence punishable under Section 379 I.P.C.

In view of the rival contentions and perusing the material available on record, the sole point that arises for consideration is ***“Whether the petitioner/accused was found in conscious possession of the stolen auto bearing registration No.AP-22-W-7079 with dishonest intention and whether he accounted for his possession. If so, whether he is liable for punishment for the offence punishable under Section 379 I.P.C or not?”***

POINT

The present petition is filed under Section 397 and 401 of Cr.P.C. Jurisdiction of this Court under Section 397 and 401 of Cr.P.C. is limited and the High Court may exercise such power only when the Court found that there is a manifest perversity in the order or the finding recorded by the Court is without any evidence or material, though section 401 of 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 or procedure, neglect or proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case. The discretion conferred on the High Court by Section 401 of I.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. Therefore, keeping in mind the scope of revision, I would like to decide the present issue before this Court. This Court normally cannot interfere with concurrent fact findings recorded by the Courts below, only in exceptional circumstances when findings are manifestly perverse or apparently erroneous.

Keeping the powers of this Court under Section 397 and 401 of Cr.P.C, I would like to advert to the disputed questions before this Court.

In view of the law declared by the Courts in various judgments, this Court can interfere with the concurrent fact findings only when this Court found that the findings recorded by both the Courts are not based on any material or findings are manifestly perverse or apparently erroneous.

Learned counsel for the petitioner, except contending that there is a discrepancy in the evidence of P.Ws. 1 and 4, nothing is brought to the notice of this Court. In fact, the discrepancy is not material and it is an admitted fact that P.W.1 is the owner of the auto bearing No.AP-22-W-7079. Whereas, the petitioner was found in possession of the auto bearing No.AP-22-W-7079 when he was intercepted by the police during vehicle check. When the petitioner could not produce the registration certificate of the vehicle, P.W.5 suspected and seized the vehicle under the cover of Ex.P-3 panchanama in the presence of mediators.

According to the contention of the learned counsel for the petitioner, the mediators are only stock witnesses and their evidence cannot be relied on. P.W.4 is Mr. P. Shekar, in whose presence the vehicle was seized under the cover of Ex.P-2 and acted as mediator. Therefore, it is difficult to conclude that any of the witnesses i.e. P.Ws.1 to 4 are the interested witnesses. The word 'interested witness' is not defined anywhere, but it can be said that a witness who is going to derive any benefit out of the litigation is said to be an interested witness. Here, any of the

witnesses are not going to derive any benefit out of this litigation. Therefore, they cannot be termed as interested witnesses. P.Ws 1 to 4 may be cordial with the investigating agency for one reason or the other. But, that is not a ground to disbelieve the testimony of those witnesses in whose presence the vehicle was seized from the possession of the petitioner under the cover of Ex.P-3.

It is the contention of the learned counsel for the petitioner that the Court can exercise its inherent jurisdiction and reappraise the entire evidence. But, this cannot be done. Moreover, the presumption under Section 114(a) of Indian Evidence Act, shall be drawn by the Court when a person who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. But, in the present case, in the entire cross-examination of P.W.1, nothing was elicited to account for his possession or he did not adduce any evidence accounting for his possession of the stolen auto bearing No.AP-22-W-7079. Though, the presumption under Section 114(a) of Indian Evidence Act is rebuttable and it can be dispelled either by eliciting anything in the cross-examination or by examining any independent witnesses, for the reasons best known to the petitioner, the petitioner did not rebut the presumption by any of the permissible modes. Therefore, the Appellate Court, based on the evidence available on record, more particularly, seizure of auto bearing No.AP-22-W-7079 from the possession of the petitioner, on the confession leading to discovery, which is relevant under Section 27 of Indian Evidence Act, concluded that the petitioner was found guilty in possession of

the stolen auto bearing No.AP-22-W-7079 and thereby, drawn presumption under Section 114(a) of Indian Evidence Act. Consequently, the findings recorded by the Appellate Court cannot be interfered, since the contention of the petitioner is devoid of merits.

In the result, the criminal revision case is dismissed at the stage of admission, confirming the sentence passed by the Principal Sessions Judge, Mahabubnagar in Crl.A.No.37 of 2017 dated 08.09.2017.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

Date:06.10.2017

SP

JUSTICE M. SATYANARAYANA MURTHY

