

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL R.C. NO.1498 OF 2005

ORDER:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. challenging the judgment, dated 26.07.2004 in Crl.A.No.89 of 2004 passed by the IV Additional Sessions Judge, Warangal confiscating M.O.3 i.e. cash of Rs.42,000/- to the State.

2. The petitioner lodged a complaint with the police alleging that PW-2 withdrawn Rs.76,000/- from Andhra Bank and handed over Rs.50,000/- to PW-1 on 21.07.2001 at about 1140 hours and kept the said amount in the dickey of his Hero Honda motor cycle bearing No. AP-36-F-9555 and went to his house at Kancharakunta, parked his vehicle and went inside. After talking on phone, at about 1155 hours he came out of the house, went to the vehicle and found that some unknown offender committed theft of Rs.50,000/- and he lodged a report with the police on 21.07.2001 itself and the same was registered as Crime No. 254 of 2001 and issued F.I.R. against the unknown offenders for the offence punishable under Section 379 IPC. Police took up investigation and arrested the accused, filed charge sheet and the court took the cognizance of the case for the offence punishable under Section 379 IPC against the accused.

3. On securing the presence of the accused, after compliance of procedure under Section 207 Cr.P.C. framed charges against them for the offence under Section 379 IPC, read over and explained to them in Telugu, they pleaded not guilty and claimed to be tried.

4. During trial, PWs.1 to 4 were examined and marked Exs:P-1 to P6 and M.Os.1 to 3. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C. explaining the incriminating evidence that appeared against them, they denied the same and reported no evidence.

5. Upon hearing argument of both counsel, the learned Spl.J.F.C.M. for PCR Cases, Warangal by judgment dt.7.05.2004 in C.C.No.485 of 2003 found the accused guilty for the offence punishable under Section 379 IPC, and sentenced them to undergo imprisonment for two years while ordering set off under Section 428 Cr.P.C. and passed the following property order:

“M.Os.1 to 3 shall be retained by PW-1 Maddi Raja Babu S/o Narayana, aged 32 years, R/o Hanmakonda and the undertaking given by him shall be in force till expiry of appeal time.”

6. Aggrieved by the conviction and sentence under impugned order passed by the magistrate, the accused preferred an appeal before the Sessions Judge in CrI.A.No.89 of 2004 and the appeal was allowed on 26.07.2004 finding the accused not guilty, acquitted the accused for the offence punishable under Section 379 IPC. M.O.3 is ordered to be confiscated to the State after recovery of the same from PW-1-M.Raja Babu, the complainant herein observing that the finding of the trial Court as to disposal of M.O.3 is not in accordance with law since the property was recovered after one year from the date of offence, thereby presumption cannot be drawn under Section 114 of Indian Evidence Act and that apart there are no identification marks on the currency notes of Rs.42,000/- and ordered to confiscate M.O.3 to the State.

7. Aggrieved by the order of confiscation of M.O.3, the present revision is filed before this Court by the petitioner contending that the accused did not claim any right over M.O.3 and the appellate court

when disbelieved that M.O.3 was not recovered soon after commission of the offence, declined to draw presumption under Section 114 of Indian Evidence Act, and the court ought to have ordered return of M.O.3 to the petitioner as he is the person who lost the money in the theft. But, the appellate court committed an apparent error in confiscating M.O.3 to the State.

8. During hearing, learned counsel for the petitioner contended that when the trial court passed an order for disposal of property M.O.3 specifically upholding the interim custody, the appellate court without recording specific reason, ordered confiscation of M.O.3 to the State, and there is no basis for the finding recorded in para 18 of the judgment and it is manifestly perverse and in such a case, this court can interfere with the finding regarding disposal of M.O.3 and pass appropriate order by exercising power under Section 397 and 401 Cr.P.C.

9. Learned Public Prosecutor for the State of Telangana fairly conceded that M.O.3 was recovered in the case immediately, but the appellate court erroneously recorded such finding in para 18 of the judgment and requested this court to pass appropriate order.

10. It is the case of the petitioner from the beginning that while he was carrying Rs.50,000/- after PW-2 drawing money from Andhra Bank, handed over Rs.50,000/- to him and carrying the same to his house, keeping the same in a dicky of Hero Honda Motor Cycle, but the said amount was stolen by some unknown persons, but on the complaint, the police registered a crime against unknown persons and investigated and recovered M.O.3 under cover of Exs:P-2 to P-4 confessional statement-cum-panchanamas and the accused never claimed ownership of M.O.3 and the trial court also having satisfied that the amount belongs to the petitioner, ordered interim custody while exercising power under Section

451 Cr.P.C. But, the appellate court recording an erroneous finding that the amount was recovered one year after the incident, rejected the claim of the petitioner and ordered confiscation. In fact, as per panchanamas Exs:P-2 to P-4 the recovery took place on 25.07.2001 and whereas the theft took place on 21.07.2001. Therefore, the recovery is within four days from the date of complaint and the finding recorded by the appellate court in para 18 of the judgment is apparently erroneous and without any evidence. Further, no other person also claimed right over M.O.3 except PW-1. PW-1 asserted that PW-2 handed over Rs.50,000/- to him after drawing Rs.76,000/- from Andhra Bank on 21.07.2001, the same was accepted by the trial court, but the appellate court on different reason disbelieving recovery not soon-after the commission of theft, acquitted the accused for the offence punishable under Section 379 I.P.C. But, this finding is apparently erroneous.

11. The present revision is filed under Section 397 and 401 Cr.P.C. under which the jurisdiction of this court is limited.

12. [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 classes, but are merely indicative. Each case would have to be determined on its own merits.

13. 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.

14. 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.

15. 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 *Amit Kapoor vs Ramesh Chander & Anr.*¹

16. In such a case by following the principle laid down in *Amit Kapoor* case 1st cited supra, this court can interfere with such finding in view of manifest error in the judgment of the appellate court in passing the property order. By adducing evidence of PWs.1 and 2, the prosecution established that PW-1 is the owner of M.O.3 and when the amount was recovered within four days from the date of offence, by drawing presumption, the court ought to have recorded a finding against the accused. But, the appellate court on an erroneous appreciation of evidence concluded that the amount was recovered after one year which is a patent error. Hence, the order passed by the appellate court ordering confiscation of M.O.3 is liable to be set aside in view of erroneous finding recorded by the appellate Court without any evidence.

¹ 2012(9) SCC 460

17. Accordingly, the order passed under Section 457 Cr.P.C. is set aside for disposal of property M.O.3 and the interim custody given to the petitioner PW-1 holds good since he is the owner of M.O.3.

18. In the result, the criminal revision case is allowed setting aside the judgment, dated 26.07.2004 in CrI.A.No.89 of 2004 passed by the IV Additional Sessions Judge, Warangal confiscating M.O.3 i.e. cash of Rs.42,000/- to the State while restoring the property order passed by trial Court.

Miscellaneous petitions, if any, pending in this case shall stand closed.

DATE: 10-08-2017
ccm



M. SATYANARAYANA MURTHY, J

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date:10.08.2017

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