

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.854 OF 2005

ORDER:

This criminal revision case is filed questioning the propriety, legality and correctness of the order dated 19.01.2015 in Criminal Appeal No.212 of 2004 passed by III Additional Sessions Judge, Guntur, confirming the order dated 02.04.2004 in CrI.M.P.No.1402 of 2003 in C.C.No.179 of 2003 passed by VI Additional Munsif Magistrate, Guntur.

The case of the prosecution is that during the night of 30.08.2002, Aslaram and Kuldeep brought a lorry bearing No.HR/38/C/9258 with a load of Samsung Colour TVs and on the way they parked the lorry with load on NH5 road near Koppuravur Village within the limits of Pedakakani Police Station and slept in the cabin of lorry. At that time, some unknown offenders stolen 42 colour TVs from the lorry worth Rs.3,61,200/-. Aslaram and Kuldeep noticed the commission of theft of 42 colour TVs on the next day morning. Immediately, Aslaram informed the same to Paleti Malleswara Rao, Gummadi Sivaramkrishna, Meka Sambaiah, Medarametla Raghava and Shaik Ibrahim and went to police station and lodged a report with the then Sub-Inspector of police, who registered a case in Crime No.147 of 2002 for the offence punishable under Section 379 IPC. Thereafter, the then Inspector of Police, Guntur Rural, took up investigation. On 08.02.2003 at about 9.00 p.m., M.Mohan, Circle Inspector of Police, Savaipet Police Station of Tamilnadu interrogated A1 to A3 in his station in Crime No.119 of 2000 punishable for the offence punishable under Section 379 IPC in the presence of mediators and A1 to A3 made a confession about the commission of theft along with 6 others. In pursuance of

their confession, the Inspector recovered one TV each from the houses of A1 to A3 under panchanama in the presence of D.Pariyaswamy and Gopalsetti Kandaswamy, produced the accused before Magistrate for judicial custody. On 01.04.2003 at 3.00 pm, the Inspector of Police, Guntur examined A1 to A3 in the presence of Nallapati Koteswara Rao and Vallabhapurapu Anjaiah with the help of Dondaparthi Krishna for translation of Tamil language into Telugu. The accused made confession that they along with six others committed the offence and they also assured that they will show 16 TVs disposed of by them, if anybody accompany with them and in pursuance of the confession, they recovered one TV from each of the accused. They also confessed that other participants of the offence viz., Baby @ Prakash, Venkatesh, Raju and Mani, who are absconding, took away 33 TVs to Chennai. After completion of investigation, the Inspector of police recovered other TVs and filed charge-sheet against the accused.

The trial Court took the case on file and on securing the presence of the accused, after compliance of Section 207 Cr.P.C. examined under Section 251 Cr.P.C. explaining the gist of accusation for the offence punishable under Section 411 I.P.C. they denied and claimed to be tried.

During the trial, on behalf of the prosecution, P.Ws.1 to 3 were examined and Exs.P1 and P2 were marked. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C. explaining the incriminating material that appeared against them. The accused admitted that they committed the offence.

Upon hearing argument of both the counsel, the trial Court found the accused guilty for the offence punishable under Section 411 IPC and sentenced them to undergo simple imprisonment for one year for the offence under Section 411 IPC while dismissing Crl.M.P.No.1402 of 2003 by ordering confiscation of the cash including interest thereon to the Government.

Aggrieved by the order, the petitioner herein who received the amount by selling the stolen property preferred Crl.A.No.212 of 2004 which ended, confirming the order dated 02.04.2004 in Crl.M.P.No.1402 of 2003 *vide* judgment dated 19.01.2005, which is now under challenge on the ground that the trial Court and appellate Court did not appreciate the evidence on record in proper perspective and in the absence of any recovery of stolen property from the petitioner, he prayed to return the amount.

When the matter is taken up for hearing, learned counsel for the petitioner did not appear and advance arguments, but this Court is not inclined to dismiss the revision for default. However, this Court can decide the revision on merits in view of the law declared in “**Nisha Sharma and others v. Vinod Kumar Sharma**”¹ wherein it is made clear that the revision cannot be dismissed for default even the petitioner or his advocate did not appear before the Court and the Court shall examine the record and decide the revision on merits.

The power of this Court under Sections 397 and 401 Cr.P.C. is limited and this Court normally accepts the concurrent fact findings recorded by both the Courts below unless those findings are manifestly perverse or apparently erroneous or without any evidence.

¹ 1990 Cri.L.J. NOC 57 (Delhi)

In the instant case, the accused committed theft of 42 colour TVs from the lorry when it was parked near Koppuravur Village of Pedakakani police station and they made confession to that effect in the interrogation in Crime No.119 of 2000 under Section 379 Cr.P.C. of Savaipet police station of Tamilnadu State. The Inspector of police again examined the accused in the presence of two mediators with the help of translator by name Dondaparthi Krishna. During interrogation, the accused assured that they will show the persons to whom 16 TVs were sold for Rs.1,29,600/- and cash was seized from the possession of the petitioner. Therefore, basing on the confession leading to discovery, which is relevant under Section 27 of the Indian Evidence Act, 1872, the Court confiscated the cash which was received by sale of stolen goods to third parties.

In view of the voluminous evidence available on record, the concurrent fact findings recorded by both the Courts below cannot be reversed on the sole ground that no colour TVs were seized from the possession of the accused which is a prime requirement to convict them. But the petitioner was found in possession of the sale proceeds of property which was stolen from the lorry when it was parked near Koppuravur Village. Therefore, the petitioner, who is in possession of sale proceeds of stolen property, is liable for punishment for the offence punishable under Section 411 of IPC. However, in view of the limited scope of revision under Sections 397 and 401 Cr.P.C., I am not inclined to interfere with the current fact findings recorded by both the Courts below and such findings are based on both oral and documentary evidence. That apart, in examination under Section 313 Cr.P.C., the accused admitted the commission of theft and receipt money by sale of stolen property.

Hence, I find no merits warranting interference by this Court while exercising jurisdiction under Sections 397 and 401 IPC. Consequently, the revision deserves to be dismissed.

In the result, the Criminal Revision Case is dismissed.

Consequently, miscellaneous petitions pending if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:07.09.2017.
ssp

