

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

**CRIMINAL REVISION CASE Nos.498, 509, 518, 524, 526, 575,
580, 581, 582 & 598 of 2017**

COMMON ORDER:

The selfsame accused involved in all the cases for the similar offence under Section 382 IPC or Section 411 IPC as the case may be in impugning the trial Court's conviction judgments confirmed by the lower appellate Court respectively in CC.Nos.781, 916, 917, 920, 919, 921, 918, 922, 785 & 780 of 2015 in CrI.A.Nos.1121, 1115, 1113, 1114, 1119, 1117, 1120, 1116, 1118 & 1112 of 2016, maintained the revisions supra.

2. Heard learned counsel for the revision petitioner/accused in jail as convict and also the learned Public Prosecutor representing the State and perused the material on record.

3. These revisions are against the concurrent findings of the Courts below. It is pursuant to the apprehension of the accused and in the course of questioning from the so called disclosure leading to discovery of certain facts within the purview of Section 27 of the Indian Evidence Act to the extent of its admissibility that is adduced during trial even, outcome of the respective defacto complainants' reports of the thefts at the respective premises correlating to the disclosure made by the accused leading to discovery of facts in relation thereto. There were property identifications also by the defacto complainants/victims concerned and pursuant to that from the police final reports and from the cognizance taken respectively for the offences and after supply of copies and from the hearing and framing of charges,

accused was put to trial in the respective cases. There were simultaneous trial and disposal of all the cases in finding the accused guilty, but for in C.C.No.916 of 2015 of 2 years imprisonment, in all the other cases is with 3 years imprisonment, however, the trial Court respectively given the concession of all the sentences in all the cases supra to run concurrently.

4. The evidence on record shows besides that of the defacto complainant as PW.1 with reference to Ex.P1 report in registering Ex.P6/FIR or the like respectively and from the identification under Ex.P5/P4 proceedings or the like respectively, that is also deposed by him and PW.2 is one of the mediators to said property identification panchanama proceedings and PW.3 is for the apprehension of the accused and on questioning, disclosures made by him that lead them to the respective places and from his showing, seizure of the respective case properties that is deposed by PW.3 in relation thereto and also by the I.O. with reference to it. The M.O.s respectively are the respective stolen property that were covered by the property identification proceedings referred supra. There are almost in all cases PWs.1 to 6 examined and Exs.P1 to P7 were marked besides the material objects which are the stolen properties seized from accused on his disclosure of its exclusive knowledge and on his showing and from his possession as referred supra.

5. Now from the above coming to the attack in the revisions on the legality and correctness of the trial Court's and that of the lower appellate Court's judgments respectively to decide

concerned, the factum of the property belongs to the defacto complainant respectively and that were stolen are proved by PW.1 and one of the mediators to the property identification and also deposed by I.O. and thus same is established of the defacto complainants' property was stolen and recovered. It is from the other evidence referred supra not only the disclosure by accused leading to discovery of property stolen as a fact described under Section 27 of the Indian Evidence Act to the extent admissible, it establishes the conscious and exclusive knowledge of the accused of the property stolen in his possession for which there is no explanation. Once such is established it establishes the offence under Section 411 IPC as once the stolen property proved belongs to the defacto complainant in setting the law in motion and its recovery from the disclosure leading to discovery of property recovered from the exclusive knowledge of the accused, it is the duty of the accused to explain how he came into the possession of the stolen property legally if at all and in the absence of which the presumption including under Section 114 of the Indian Evidence Act as per the settled law is that he is the receiver of the respective stolen properties. To that extent, against the respective conclusions by the Courts below, there is practically nothing to interfere. In one of the Calendar Cases there is a finding of the offence under Section 411 IPC is proved. However for the other cases to say that accused was thief, there is no any direct evidence. Once such is the case, in the other cases also, only the offence under Section 411 is made out and not under Section 382 IPC and to that extent the respective findings of the lower Courts require modification. However the fact remains that

the sentence of imprisonment of maximum 3 years with or without fine is provided either for the offence under Section 382 IPC or for the offence under Section 411 IPC. The trial Court respectively imposed the maximum sentence of imprisonment. It no doubt shows the accused is one of the habitual criminal in showing involved in the 10 cases referred supra and leniency cannot be shown on that ground. However from other factual background, including from the hearing on sentence of the accused recorded by the trial Court with reference to the age shows, some concession in the sentencing policy is required to be given, though as rightly concluded by the Courts below it is not a fit case either to apply Section 360 Cr.P.C. or the respective provisions of the Probation of Offenders Act, 1958.

6. Having regard to the above, the revisions are partly allowed and the findings of conviction for the offences under Section 382 IPC is modified in all 9 cases to one under Section 411 IPC and consequently the sentence of three (03) years imprisonment in other 9 cases is also reduced to 2 years by confirming concurrent running of the sentence of imprisonments and by giving set off of the period respectively undergone.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 27.04.2017
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