

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2737 OF 2017

JUDGMENT:

The present Criminal Revision Case is preferred under Section 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code') questioning the judgment, dated 18.08.2017 in Criminal Appeal No.38 of 2015, whereby and where-under, VII Additional District Judge, Gudur, SPSR Nellore District confirmed the conviction recorded under Section 248 (2) of the Code by the Additional Judicial Magistrate of First Class, Gudur, for the charges under Sections 457 and 380 of the Indian Penal Code, 1908 (for short 'IPC'), and sentence of rigorous imprisonment of one year and to pay a fine of Rs.2,000/- with default sentence to undergo simple imprisonment for one month on each count while giving set off for the remand period under section 428 of the Code.

2. Heard Sri Penumaka Venkata Rao, learned counsel for the revision petitioner, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

3. The learned counsel would submit that Courts below went wrong in appreciating the evidence on record in correct perspective and the evidence on record is descriptive testimony and, therefore, to set aside the judgments of both the Courts below acquitting the petitioner.

4. The learned Assistant Public Prosecutor would support the conviction recorded and sentence of imprisonment inflicted on the petitioner for both the charges referred to in the above.

5. The theft property consists of two Cell phones. The brief facts are, when PW.1- *de facto* complainant went to her mother's house along with her husband (PW.2) to attend the death ceremony of her mother, the petitioner herein alleged to have broken the lock of main door of their house situate in Ashok Nagar, Gudur, SPSR Nelllore District and gained entrance into the house, and while he was searching for valuables having already committed theft of two cell phones marked as MOs.1 and 2, since PWs.1 and 2 returned home and when they switched on the lights, they found the petitioner searching for the valuables and caught hold of him along with MOs.1 and 2, and thereby a complaint was lodged with I Town Police Station, Gudur Town, who registered a case in Crime No.175 of 2009 under Sections 457 and 380 IPC. After completion of investigation, charge sheet was laid, and the learned Magistrate assigned Calendar Case No.44 of 2010.

6. When the learned Magistrate examined the petitioner under Section 239 of the Code having complied with the formalities of supplying copies under Section 207 of the Code, since he pleaded not guilty and claimed to be tried, trial was held.

7. On behalf of the prosecution, PWs.1 to 6 were examined and Exs.P-1 to P-6 were marked and MOs.1 and 2, which are Signam Cell phone without battery and LG Reliance mobile were marked through PW.1.

8. The learned Magistrate having found that the petitioner was caught red-handed by PWs.1 and 2 in possession of MOs.1 and 2, there was no reason to disbelieve the evidence of PWs.1 and 2 and, thus, opining that the complicity of the petitioner was proved in the commission of offences alleged against him, held that the prosecution proved the charges under Sections 457 and 380 IPC beyond all reasonable doubt, and thereby recorded the aforesaid conviction and inflicted the sentences of imprisonment referred to in the above taking a lenient view in view of the submissions made by the petitioner when questioned about quantum of sentence to be imposed in the aforesaid Calendar Case.

9. Aggrieved over the same, when the petitioner preferred Criminal Appeal No.38 of 2015, the learned VII Additional District Judge, Gudur, holding that PWs.1 and 2 are the direct witnesses to the incident and, in fact, the petitioner was caught red-handed by them, though PW.4 did not support the prosecution case though, he was cited as an eye-witness, still, holding that the evidence of PWs.1 and 2 is cogent and convincing, affirmed the conviction recorded by the

learned Magistrate, and upheld the sentences of imprisonment imposed.

10. The petitioner getting aggrieved over further, preferred the present Criminal Revision Case.

11. The submissions made by the learned counsel for the petitioner have already been referred to in the above and so also the learned Assistant Public Prosecutor.

12. At the outset, it is observed that when concurrent findings have been recorded by the Courts below, unless the petitioner is able to show that these findings do suffer from patent illegality, no interference is warranted. Now, when looked at the evidence let in by the prosecution witnesses, it is no doubt true, PW.4 turned hostile, but that would not in any way impeach the evidence of PWs.1 and 2 to score out their evidence. In fact, they are the direct witnesses and they caught the petitioner at the time of incident at their residence, and even found the petitioner in possession of MOs.1 and 2. Therefore, no further discussion is required even on facts, and conviction recorded by the learned Magistrate and affirmed by the learned Sessions Judge, do not warrant any interference at all. There is no merit in the present Criminal Revision Case and, therefore, the same is dismissed.

13. Now, turning to the submission of the learned counsel for the petitioner that the petitioner has already answered when he was questioned that he has got aged mother and there are no others to look after her, keeping in view, that the property involved is a Signam Cell phone without battery and LG Reliance mobile, the sentence of imprisonment for one year on each count imposed by the learned Magistrate and affirmed by the learned Sessions Judge in appeal are modified reducing to six (6) months under each count.

14. Thus, only in regard to the modification of the sentence of imprisonment, the judgments rendered by the Courts below are interfered with, but not with the conviction recorded. It is mentioned in Crl.R.C.M.P.4467 of 2017 that the revision petitioner is serving the sentence in Central Prison, Nellore. Therefore, there is no need to give any further directions.

15. The Present Criminal Revision Case is, accordingly, dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending in the revision case, stand closed.

A. SHANKAR NARAYANA, J

November 02, 2017.

Mgr