

HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.422 of 2018

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor for the respondent State.

The present revision case is filed by accused No.4 challenging the judgment passed in CrI.A.No.1357 of 2017 dated 02.01.2018 on the file of the Metropolitan Sessions Judge, Hyderabad, confirming the judgment in C.C.No.1056 of 2016 dated 29.11.2017 on the file of the II Additional Chief Metropolitan Magistrate, Hyderabad.

The case of the prosecution is that PW.1/complainant gave a complaint on 10.05.2015 stating that the accused have committed theft of cell phone while she was walking on the road. Basing on the said complaint, the Sub-Inspector of Police i.e., PW.3 registered a case vide Crime No.499 of 2015 for the offence under Section 379 IPC. During the course of investigation, on 03.08.2015, at 7.00 a.m., the head constable and two constables belonging to Afzalgunj Police Station found A1 to A4 under suspicious circumstances with an Auto and found some cash in their possession. They brought them to PW.3, who, in turn, secured two independent panch witnesses and in their presence recovered Rs.30,000/- and a knife from A1, Rs.20,000/- from A2, Rs.50,000/- from A3 and Rs.10,000/- and an Auto from A4 i.e., the petitioner. In fact, on the confession made before him a sum of Rs.60,000/- and

Rs.40,000/- have been recovered from the houses of A1 and A2 respectively. After completion of investigation, a charge sheet was laid. The learned II Additional Chief Metropolitan Magistrate, after taking cognizance of the offence against the accused, numbered the case as C.C.No.1056 of 2016.

On appearance of all the accused, the copies of the documents were furnished as required under Section 207 Cr.P.C. Thereafter, the accused were examined under Section 239 Cr.P.C., for framing charge under Section 379 read with 411 IPC. The accused denied the charge leveled against them. Therefore, a charge for the offence under Section 379 read with 411 IPC has been framed. The accused pleaded not guilty and claimed to be tried.

The prosecution, in order to prove the guilt of the accused, examined PWs.1 to 3 and marked Exs.P1 to P8. After closure of the evidence, they were examined under Section 313 Cr.P.C., explaining the incriminating circumstances appearing in the evidence adduced on behalf of the prosecution. The accused denied the same, but did not choose to adduce any evidence on their behalf.

The learned Magistrate, after considering the facts and analyzing the evidence brought on record, convicted all the accused, including the petitioner, for the offence under Section 379 read with 411 IPC and sentenced to suffer rigorous imprisonment for a period of two years each and shall pay fine of Rs.1,000/- each and in default of payment of

fine amount, they shall undergo simple imprisonment for three months each by judgment dated 29.11.2017. Aggrieved by the same, A1 and the petitioner (A4) filed CrI.A.No.1357 of 2017 before the Metropolitan Sessions Judge, Hyderabad. After hearing, the learned Sessions Judge was pleased to dismiss the appeal by judgment dated 02.01.2018, confirming the conviction passed by the trial Court. Aggrieved by the said judgment, the petitioner filed the present revision case.

Learned counsel appearing for the petitioner contended that both the Courts below failed to consider the major omissions and contradictions in the prosecution evidence, which made the prosecution version unbelievable and unacceptable. Both the Courts below erred in convicting the petitioner for the offence under Section 379 read with 411 IPC, as the ingredients of the said offence are not made out. PW.1 did not file any single document to show that she is the owner of the laptop etc.

Having heard the learned counsel and from the perusal of the material on record, it is revealed that the petitioner along with three others have been charged for the offence under Section 379 read with 411 IPC. The gravamen of the charge against the petitioner by the prosecution is that the petitioner along with A1 to A3 are in the habit of committing theft of cell phones, laptops, purses etc. On 10.05.2015, the Samsung cell phone of PW.1 was stolen which lead to lodging of a complaint. Pursuant to the same, Crime No.499 of 2017

was registered under Section 379 IPC. The prosecution to prove the guilt of the accused examined PWs.1 to 3. In fact, though PW.1 was examined, she was not even cross-examined in the trial Court. It is relevant here to mention that the case of the prosecution is that Samsung Note 3 mobile phone of PW.1 was stolen on 10.05.2015 while she was travelling in a bus. The said fact is not challenged in the cross-examination.

PW.2, who is an independent panch witness, deposed that on 03.08.2015 at 10.00 a.m., the Afzalgunj police called him to police station where A1 was produced before him and he stated that he is an auto driver and he committed various thefts at various places i.e., theft of mobile phones, purses from the passengers along with A2 to A4 and the police seized Rs.30,000/- from his possession. Similarly, A2 was also produced before him and from his possession Rs.20,000/- cash was seized. A3 admitted that he also committed theft of mobile phones and purses from passengers. Then they proceeded to the house of A1 and A2 and recovered cash of Rs.60,000/- and Rs.40,000/- respectively. The police prepared the seizure panchanama under Exs.P2 to P5. It is relevant here to mention that in the cross-examination, PW.2 stated that he can identify A1 by name Imran and denied that he is a stock witness of the prosecution. He also stated that he knows the contents of Exs.P2 to P6.

As far as PW.3, who is the Investigating Officer is concerned, he stated that during the course of investigation, on 03.08.2015, his staff apprehended the accused at Central Library, Afzalgunj, and produced before him. On interrogation, they revealed their names and admitted their guilt in this case and also in various cases. He secured the presence of PW.2 and another and drafted the confession-cum-seizure panchanamas.

The evidence of PWs.1 to 3 corroborated the seizure of money as well as the auto from the possession of the petitioner. Though the confession made before PW.3 is not admissible in evidence, recovery of cash from the petitioner and other three accused is admissible. During the course of seizure, PW.3 recovered cash to the tune of Rs.2,60,000/- from A1 to A4. Nothing is elicited in the cross-examination of PW.3 to discredit his evidence or any petition has been filed by any of the accused claiming ownership of the cash recovered from them. In fact, they never claimed the ownership stating that it is their earnings or savings. The said cash was deposited before the Court. In the present case, the stolen property is Samsung mobile phone. In fact, the articles, which were stolen by the accused, including the petitioner, have been sold. If really the petitioner and other accused are innocent of the charges levelled against them, they would have claimed the cash from the Court citing the source of income. When the cash was seized from the

custody of the petitioner and other accused, the presumption under Section 114 of the Evidence Act can be drawn to the effect that when a person is found to be having stolen property in his possession, he is presumed to be a thief.

In the present case, though the Samsung mobile phone is not recovered, cash was recovered from the personal custody of the accused. When the case of the prosecution, particularly, the evidence of PW.1 went unchallenged, it cannot be said that the prosecution failed to prove its case. In fact, both the Courts below have appreciated the same and convicted the petitioner. In these circumstances, this Court is of the opinion that there is no irregularity or illegality in the judgments of both the Courts below. The scope of revision under Sections 397 and 401 Cr.P.C., is very limited. Though the petitioner has raised several grounds in the present revision case, he miserably failed to establish what is the perversity or the illegality on the face of the judgment of the lower appellate Court. Even on this ground also the revision case is liable to be dismissed.

Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHA RAO, J

Date: 07.09.2018.
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