

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.1178 of 2017

ORDER:

Heard the learned counsel for the parties.

The present revision case is filed assailing the judgment passed in CrI.A.No.744 of 2015 dated 03.02.2017 on the file of the II Additional Metropolitan Sessions Judge, Hyderabad, confirming the judgment in C.C.No.463 of 2008 dated 12.06.2015 on the file of the VII Additional Chief Metropolitan Magistrate, Hyderabad, acquitting the accused/respondent Nos.2 to 6 herein for the offence under Sections 448, 457, 457, 380, 427, 506 read with 34 IPC.

The case of the prosecution is that on 16.06.2007 at about 10.30 p.m., PW.1, after completing the business, left the shop. On the next day, when he came to his shop, he noticed that the locks of the shop are different from which he locked it on 16.06.2007. He broke open the locks and after opening the shutters, he noticed that all the material in the shop was missing. When he tried to inform the same to his son, all the accused forcefully trespassed into the shop and stated that the shop belongs to them and necked out PW.1 from the shop and closed the shutters. In fact, there were civil disputes between PW.1 and the accused and the accused unable to face the civil disputes have committed theft of his shop. Pursuant to the complaint, a crime was registered vide FIR.No.124 of 2007 for the above said offences. On

21.06.2007, LW.10 visited the scene of offence and recorded the statements of LWs.2 to 5. He also drafted the scene of offence observation panchanama in the presence of mediators and took photographs with the assistance of LW.8. In the meanwhile, all the accused obtained anticipatory bail. After completion of investigation, a charge sheet was filed.

The learned Magistrate, after taking cognizance of the offence, numbered the case as C.C.No.463 of 2008. On appearance of all the accused, they were supplied with copies of relevant documents as contemplated under Section 207 Cr.P.C. Thereafter, charges were framed against them for the above said offences under Section 239 Cr.P.C.

To prove the guilt of the accused, the prosecution in all examined PWs.1 to 6 and marked Exs.P1 to P5. After closure of the prosecution witness, the accused were examined under Section 313 Cr.P.C., after explaining the incriminating evidence brought against them in the prosecution evidence, but, they denied the same. However, they reported no defence on their behalf.

After hearing, the learned Magistrate found all the accused not guilty for the offence and accordingly acquitted them under Section 248 (1) Cr.P.C., by judgment dated 12.06.2015. Aggrieved by the said judgment, the State filed CrI.A.No.744 of 2015 on the file of the II Additional Metropolitan Sessions Judge, Hyderabad. The learned Sessions Judge, after hearing the appeal, was pleased to

dismiss the same by judgment dated 03.02.2017, confirming the judgment of the Court below. Aggrieved by the said judgment, the petitioner/de facto complainant filed the present revision case.

Learned counsel appearing for the petitioner would contend that both the Courts below erroneously acquitted the accused on the ground that the stolen material could not be recovered from them and as such, it cannot be believed as to whether the accused have committed the theft or not. The lower appellate Court grievously erred in acquitting the accused on the premise that there are several civil disputes between the parties and it is possible to file such a complaint against the accused. He also contended that conviction under Section 380 IPC will not depend upon recovery of the stolen articles alone. The Court below ought to have appreciated that the accused have trespassed into the premises of the petitioner. Though the incident occurred manifestly establish commission of theft, the investigating agency failed to place the photographs on record to that effect. Though the basic ingredients of commission of offence under Sections 448 and 457 IPC are established, both the Courts below failed to appreciate the same on proper perspective and acquitted the accused erroneously and thereby the impugned judgment is unsustainable.

Learned counsel appearing for respondent Nos.2 to 6/accused supported the impugned judgment.

Having heard both the counsel and from a perusal of the material on record, the issue that crops up for consideration is:

Whether the prosecution proved its case beyond reasonable doubt against all the accused for the aforesaid charges?

PW.1, who is the de facto complainant, in his evidence reiterated the contents of the complaint. When he found that the material available in his shop was stolen and about to contact his son, all the accused forcibly trespassed into the premises and necked him out. However, the case of the accused is that the shop belongs to them and they were running business in the said premises. The complaint, which is marked as Ex.P1, was prepared on 21.06.2007, but as per Ex.P5, the offence occurred on 16.06.2007. The information was received at the police station on 21.06.2007. As such, there is a delay of 5 days in reporting the matter to the police. It is an admitted case that several civil disputes are pending between the de facto complainant and the accused vide O.S.Nos.2308 and 2309 of 2007.

PW.2, who was examined as an eye witness, deposed that after breaking open the locks of the mulgi, they found the articles missing in the shop. They also found that there is a hole to the wall, but in the meanwhile, the accused came and pushed PW.1 out of the shop.

PWs.3 and 4, who are the panch witnesses, deposed that the police prepared the panchanama and also the rough sketch. PW.5, being the photographer, has taken Ex.P4, photos, as asked by the police.

From the evidence of the prosecution, no material objects are marked. The case property, which was alleged to have been stolen by the accused, was not recovered by the police from the possession of any of the accused. In fact, in order to attract the offence under Sections 448, 457 and 506 IPC read with 34 IPC, the prosecution has to establish the ingredients with regard to forcible entry of the accused into the premises as well as the threatening alleged to have been given to PW.1. Though PW.2 was examined as an eye witnesses, he did not support and corroborate the evidence of PW.1 in all respects. Admittedly, the stolen material was also not recovered from any of the accused. In the absence of establishing the *prima facie* case with regard to commission of the offence as alleged, it cannot be said that the accused are liable to be punished. Therefore, conviction cannot be based on the sole testimony of PW.1. Coupled with the same, there are several civil disputes between the petitioner and respondent Nos.2 to 6. In these circumstances, unless the prosecution proves its case beyond reasonable doubt, it cannot be said that both the Courts below have committed any error in acquitting respondent Nos.2 to 6.

Further, the scope of revision under Sections 397 and 401 Cr.P.C., is very limited. When both the orders are starring at the petitioner, unless the perversity or otherwise of the judgment is established with cogent evidence, an acquittal cannot be converted into conviction in a revision. Even on this ground also the petitioner failed to establish his case and as such, there are no merits and 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: 10.12.2018.
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