

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Revision Case No.552 of 2018

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner/accused, challenging the judgment, dated 20.02.2018, passed in CrI.A.No.100 of 2016, by the Principal Sessions Judge, Khammam, whereby and whereunder, the judgment, dated 27.05.2016, passed in C.C.No.66 of 2015 by the III Additional Judicial Magistrate of First Class, Khammam, was modified.

2. Heard the learned counsel for the petitioner/accused, learned Assistant Public Prosecutor representing the respondent-State and perused the record.

3. The learned counsel for the petitioner/accused would submit that no offence is made out against the petitioner/accused under Section 411 of I.P.C. Both the Courts below erred in convicting and sentencing the petitioner/accused. P.W.7, the so-called witness to the seizure, does not belong to that vicinity. P.Ws.1 to 3 are highly interested witnesses. There are no direct witnesses to the alleged offence. The seizure of M.Os.1 and 2 is absolutely false. Nothing was seized from the possession of the petitioner/accused. False case is foisted against the petitioner/accused at the behest of the accused in C.C.No.387 of 2010. This is a pre-planned implication of the petitioner/accused in the instant case. The owner of the premises from where M.Os.1 and 2 were alleged to have been

seized was not examined by the police. There is inconsistency in the deposition of the witnesses and ultimately prayed to set aside the conviction and sentence recorded against the petitioner/accused for the offence under Section 411 of I.P.C.

4. The learned Assistant Public Prosecutor contends that there is ample evidence on record to prove the guilt of the petitioner/accused. The Court of Sessions has rightly modified the provision of law to Section 411 of I.P.C. and accordingly convicted and sentenced the petitioner/accused for the said offence. There is no infirmity in the impugned judgment and ultimately prayed to dismiss the Revision.

5. The point for determination is whether the conviction and sentence recorded against the petitioner/accused by the Court of Sessions for the offence under Section 411 of I.P.C. is liable to be set aside.

6. The commission of theft of M.Os.1 and 2 by the petitioner/accused was reported by P.W.1. P.W.3 was injured in this case and she was shifted to the hospital. The value of the property Rs.75,000/-. On 31.01.2015, on the basis of the confession made by the petitioner/accused, in the presence of P.W.7 and another, under Ex.P.4 Panchanama, M.Os.1 and 2 were recovered by the police. M.Os.1 and 2 were identified by its owner. There is specific evidence of P.W.1 with regard to the confession and recovery of M.Os.1 and 2. As per the evidence of P.W.7, he is a tenant of P.Satyanarayana. The petitioner/accused is also a tenant of P.Satyanarayana. P.W.7

testified without any contradiction about the recovery of M.Os.1 and 2 and other weapon of offence. When there is cogent and convincing evidence of P.W.7, it cannot be said that he did not belong to the vicinity and he is a planted witness. There is no record to believe that M.Os.1 and 2 were not recovered at the instance of the petitioner/accused. The Court below, while determining the *lis*, relied on the decision of the Apex Court in *Gulab Chand Vs. State of Madhya Pradesh*¹ and elaborately dealt with the admissibility of the evidence. The Court below had also relied on Section 114(a) of the Indian Evidence Act, 1872. There is four days gap between the date of commission of offence and recovery of M.Os.1 and 2. The petitioner/accused did not explain as to how he came in possession of M.Os.1 and 2. The property shown was identified by P.W.1 and P.W.8. The Court of Sessions, after analysing the entire evidence, found the petitioner/accused guilty of the offence under Section 411 of I.P.C. and accordingly convicted and sentenced him to suffer Rigorous Imprisonment for one year and to pay fine of Rs.5,000/-, in default, to suffer simple imprisonment for three months. The contentions raised on behalf of the petitioner/accused do not deserve any consideration. There is ample evidence on record to believe that the petitioner/accused committed the offence punishable under Section 411 of I.P.C. This Court finds no infirmity in the impugned judgment of the Court of Sessions. The Criminal Revision Case is devoid of merit and is liable to be dismissed.

¹ (1995) 3 SCC 574

7. Accordingly, the Criminal Revision Case is dismissed.

Miscellaneous Petitions, if any, pending in this Criminal Revision Case, shall stand closed.

Dr. SHAMEEM AKTHER, J

19th March, 2018
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