

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.1355 of 2018

ORDER:

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

The present revision case is filed against the judgment in CrI.A.No.198 of 2017 dated 13.10.2017 on the file of the learned IV Additional District Sessions Judge, Tanuku, West Godavari District, confirming the conviction and sentence passed in C.C.No.1041 of 2015 dated 01.11.2016 on the file of the II Additional Judicial Magistrate of First Class, Tanuku, for the offences under Sections 457 and 380 IPC against the petitioner.

The facts of the case are that the de facto complainant is running Mee-Seva Office in his own house. On 12.09.2015, at 4.00 p.m. he along with his family went to Srisailam. While they are returning home on 15.09.2015, his brother, who is residing in another portion, telephoned and informed that the locks of his house are broke open and some unknown persons committed theft in the last night. On verification, the de facto complainant found Rs.9,500/- with the denomination of Rs.500/- missing. Therefore, he lodged a complaint. Pursuant to the said complaint, Crime No.99 of 2015 was registered for the offence under Sections 457 and 380 IPC. After investigation, charge sheet was filed in the Court of the learned II Additional Judicial Magistrate of First Class, Tanuku. The learned Magistrate, after taking cognizance of the offence, numbered the case as C.C.No.1041 of 2015. After producing before the Court, the petitioner was furnished with the

documents under Section 207 Cr.P.C. Subsequently, charges were framed for the above said offence against the petitioner.

During the course of trial, the prosecution has examined PWs.1 to 6 and marked Exs.P1 to P6. After closure of the prosecution evidence, the petitioner was examined under Section 313 Cr.P.C., and explained the incriminating evidence available against him. The petitioner denied the prosecution evidence. After hearing, the learned Magistrate convicted the petitioner under Section 248(2) Cr.P.C. and sentenced him to undergo simple imprisonment for a period of two years and also to pay a fine of Rs.1,000/- for the offence under Section 457 IPC and in default of payment of such fine, he shall undergo simple imprisonment for a period of one month by judgment dated 01.11.2016. He was also found guilty under Section 380 IPC and convicted under Section 248(2) Cr.P.C. to undergo simple imprisonment for a period of two years and also fine of Rs.1,000/- and in default of payment of fine, he shall undergo simple imprisonment for a period of one month.

Aggrieved by the said judgment, the petitioner filed an appeal in CrI.A.No.198 of 2017 on the file of the IV Additional District Sessions Judge, Tanuku. After hearing, the lower appellate Court dismissed the appeal by confirming the judgment of the trial Court by judgment dated 13.10.2017. Aggrieved by the said judgment, the present revision case is filed.

Learned counsel appearing for the petitioner contended that the judgment of the lower appellate Court is contrary to law, weight of evidence and probabilities of case, since the prosecution failed to examine any neighbour at the scene of offence. There is no independent identification of the petitioner at the time of

occurrence of the offence. The lower appellate Court ought to have seen that PW.2 is a planted witness and he is brought for the purpose of the prosecution case and the benefit of the provisions of PO Act should be given to the petitioner and the sentence passed by it is too harsh and excessive. The lower appellate Court ought to have seen that the Court below has not properly appreciated the evidence and material on record.

Per contra, the learned Public Prosecutor supported the judgments of both the Courts below and submitted that the prosecution has proved the guilt of the petitioner beyond reasonable doubt on all the offences for which he is charged. In fact, both the Courts below after appreciating the factual aspects has categorically held that the petitioner has committed the offences for which he is charged and since the scope of revision is very limited, the revision, as filed, is liable to be dismissed.

After hearing both the sides and a perusal of the material on record, the case of the prosecution is that the petitioner committed offence under Sections 380 and 457 IPC and to prove the guilt of the petitioner, prosecution has relied on the evidence of PWs.1 to 6.

PW.1 is the complainant and he narrated the sequence of events that have taken place on the fateful day i.e., on 15.09.2015. After coming from Srisailam, the de facto complainant noticed that the locks of his house were broke open and after entering into the house, he noticed some unknown persons committed theft of Rs.9,500/- resulting in filing of the complaint (Ex.P1). Pursuant to the said complaint, a crime was registered and investigation was conducted. PW.2, VRO, prepared the scene observation report i.e.,

Ex.P2. PW.3, who is another VRO, stated that he along with LW.10 went to the police station and proceeded to Rajiv Chowk center. At the center they found the accused on suspicion and caught him. On enquiry, the accused confessed that he committed theft of Rs.9,500/- from the house of Pw.1. The accused was arrested under the cover of Ex.P3, mediators report. On the basis of the report given by Pw.1, PW.4, Head constable, registered FIR i.e., Ex.P4. The evidence of PW.5, Sub-Inspector of Police, who investigated the matter, is also corroborated with the evidence of PW.1. As per the evidence of PWs.3 and 5, it is proved that the accused committed theft of Rs.9,500/- from the house of PW.1 and spent for his own. In those circumstances, both the Courts below have rightly convicted the petitioner.

The scope of revision is very limited, more particularly, when the lower appellate Court confirmed the conviction passed by the trial Court. Unless the petitioner establishes that there is perversity in the findings arrived at by the Courts below and there is a patent illegality on the face of the record and if corrected would result in acquittal of the petitioner, this Court cannot re-appreciate the evidence based on which the findings are given by both the Courts below.

In the case on hand, though the counsel for the petitioner admitted to draw minor inconsistencies in the evidence of the prosecution, the same cannot dislodge the findings arrived at by both the Courts below on factual and legal aspects. In these circumstances, this Court is of the opinion that there are no merits in the revision case and the same is liable to be dismissed.

The petitioner was in remand from 26.11.2015 to 01.11.2016 and after the judgment of the lower appellate Court also he is in remand. In fact, the petitioner is already undergoing sentence in other cases. If the period of remand is calculated from 26.11.2015, the petitioner is already in remand for considerable period. On this the learned counsel for the petitioner pleaded mercy for the petitioner since he is only the earning member of the family and he is inside the jail for a long period.

Taking into consideration the said submissions and also the period for which the petitioner is in remand, the period of remand already undergone by him is sufficient. Hence, this Court hereby set him free on the sentence already undergone, if he is not required in any other case.

Accordingly, the criminal revision case is dismissed confirming the conviction recorded against the petitioner vide judgment dated 13.10.2017 passed in CrI.A.No.198 of 2017 on the file of the learned IV Additional District Sessions Judge, Tanuku, West Godavari District, by modifying the sentence of imprisonment of two years to the extent of the period already undergone by the petitioner as sufficient. Hence, this Court directs that the petitioner may be released forthwith, if he is not required in any other crime.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHA RAO, J

Date: 02.07.2018.
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