

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.R.C.No.2678 of 2018

ORDER:

This revision is arising out of judgment dated 12.01.2018 passed in Crl.A.No.1345 of 2017 on the file of Metropolitan Sessions Judge, Hyderabad, wherein the lower appellate Court has dismissed the appeal confirming the conviction and sentence imposed by the trial Court against the accused for the offence under Section 411 IPC and sentenced to undergo rigorous imprisonment for a period of three years.

2. Brief facts of the case of the prosecution are that : One Siddappa, parked his Tata Sumo vehicle bearing No AP-26E-1719 in front of R.R.Store, GST colony, Yousufguda, Hyderabad for getting it repaired. On 21.12.2016 at 10.00 a.m., when he went to the same place of parking, he did not find the vehicle there. He searched for the vehicle and gave a report to the Police, Jubilee Hills Police Station and they registered a case in Crime No.14 of 2017 under Section 379 IPC and investigated the matter. During the investigation, the police received information about the revision petitioner and arrested him in Nagarkurnool in Crime No.37 of 2017, and registered a case against him under Sections 457 and 380 IPC of Panjagutta Police Station. The revision petitioner confessed to have committed the offence. The investigating

officer has filed a requisition for issuance of PT warrant against the petitioner and produced him before the Court below on 28.03.2017. The prosecution examined PW.1 to PW.4 and marked Ex.P1 to Ex.P6 and Material Object (MO.1)- Tata Sumo vehicle.

3. The trial Court convicted the accused for the offence under Section 411 IPC and sentenced him to undergo imprisonment for a period of three years and he was found not guilty for the offence under Section 379 IPC and accordingly acquitted him for the said offence. Aggrieved by the impugned order, the petitioner/accused preferred an appeal before the lower appellate Court, but the same was dismissed by confirming the trial Court judgment. Being aggrieved, the present revision has been filed by the petitioner.

4. Heard the arguments of the learned counsel for the petitioner and learned Public Prosecutor.

5. Learned counsel for the petitioner submits that the petitioner/accused was acquitted for the offence punishable under Section 379 IPC and he was convicted for the offence under Section 411 IPC.

6. It is argued that the petitioner is an innocent and therefore the charge under Section 379 IPC has not proved

against him. But however he was convicted for the offence punishable under Section 411 IPC.

7. As far as charge under Section 411 IPC, it reads as under :

Section 411 IPC deals with :

411. Dishonestly receiving stolen property.—Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

8. As per Section 411 IPC, the punishment for the offence under Section 411 is three years. In fact, the petitioner has already served imprisonment for about 2 years. In alternative, the learned counsel for the petitioner submits that if offence under Section 411 IPC is proved against the petitioner may be given set off for the period already undergone by the petitioner, for the offence under section 411 IPC.

9. Learned Public Prosecutor submits that the petitioner was involved in Crime No.37 of 2017 of Panjagutta Police Station. It is further submitted that the trial Court has convicted the accused for the offence under Section 411 IPC as there is recovery of Material Object No.1 at his instance.

10. Learned counsel for the petitioner submits that the petitioner was acquitted in Crime No.37 of 2017 of panjagutta

Police Station for the offence under Sections 457 and 380 of IPC.

11. At the outset, this revision is arising out of the judgment passed by the lower appellate court confirming the judgment passed by XVII Additional Chief Metropolitan Magistrate, Nampally Criminal Courts, Hyderabad, convicting the petitioner herein for the offence under section 411 IPC.

12. The trial Court having disbelieved the version of the prosecution that the petitioner/accused committed theft of the vehicle, has acquitted him for the offence under Section 379 IPC, but however convicted him for the offence under Section 411 IPC coming to a conclusion that the accused was in possession of the vehicle, as such, he was a receiver of stolen property, attracts the provision under Section 411 IPC.

13. As per Section 411 IPC, whoever dishonestly receives or retains any stolen property is liable for the punishment of a term of three years, or with fine, or with both.

14. No doubt another crime was registered against the accused in Crime No.37 of 2017 but it is submitted by the learned counsel for the petitioner that the case ended in acquittal.

15. Learned Public Prosecutor has not produced any material to show the stage of the case in that crime.

16. In view of the fact that there is recovery of Material Object No.1 from the petitioner/accused and the trial Court has invoked Section 411 IPC for convicting him and sentence of imprisonment undergone by the petitioner for a period of 20 months would serve ends of justice.

17. Therefore, the conviction recorded by the trial Court and as confirmed by the lower appellate Court against the petitioner/accused for the offence punishable under Section 411 IPC is confirmed. But, however, the sentence of imprisonment is confined to the sentence of imprisonment already undergone by the petitioner/accused.

18. The petitioner/accused shall be released forthwith if he is not required in any other case.

19. With the above modification, the Criminal Revision Case is allowed.

Miscellaneous Petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J.

Date : 15-12-2018.

Note : please send operative portion of this order as advance order.

(b/o)

Gvl