

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL REVISION APPLICATION NO. 370 OF 2002**

Shri Gotilal Dalchand Jain,
residing at 273, Mapla Mahal,
3rd Floor, Room No. 58,
J.S.S.Road, Girgaum, Mumbai-4.

...Applicant.

Vs.

The State of Maharashtra

....Respondent.

Mr. Subodh Desai for the Applicant.

Smt. J.S. Lohokare, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 18th JULY, 2019.

ORAL JUDGMENT:-

By the present Revision under Section 397 of the Code of Criminal Procedure, the Applicant has impugned the Judgment and Order dated 3rd August, 2002 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Appeal No. 124 of 2001, dismissing the said Appeal and confirming the Judgment and Order dated 20th April, 2001 passed by the learned Metropolitan Magistrate, 14th Court, Girgaon, Mumbai in Criminal Case No. 119/P/1999, convicting the Applicant for the offence punishable under Section 411 of the Indian Penal code (for short, "I.P.C.") and sentenced him to

suffer rigorous imprisonment for one year and to pay a fine amount of Rs.1,000/- in default of payment of fine, to further undergo rigorous imprisonment for three months.

2 Heard Mr. Desai, the learned counsel for the Applicant and the learned APP for the State. Perused the entire record.

3 Prosecution case in nutshell is that, P.W. No.1 Shri Nitin Ajmera had lodged a complaint with the Gamdevi police station on 25th May, 1999 regarding theft of various articles including gold ornaments, committed at his residence on or before 23th May, 1999. In his complaint, the informant had expressed suspicion against two of his maid servants, earlier working with him in his house. During the course of investigation, one of the servants namely Deepak (Accused No.1) came to be arrested from his native place on 26th May, 1999 and substantial articles, including jewellery items were seized at his instance.

 During the custodial interrogation of the co-accused Deepak (Accused No.1), disclosed that, he sold one gold chain with a pendent and pair of ear-rings to the Applicant. A memorandum panchanama to that effect was recorded by the Investigating Agency.

The co-accused Deepak led the police to the shop of the Applicant on 28th May, 1999 and upon making inquiry with the Applicant, the Applicant produced one gold chain from his shop. The said articles were taken in custody by effecting a panchanama. The said articles were identified by the informant in police station on 28th May, 1999. After completion of investigation, police submitted charge-sheet in the crime. The crime as alleged against the Applicant is under Section 411 of the I.P.C.

4 The record indicates that, co-accused Deepak (Accused No.1) pleaded guilty before the Trial Court and has been sentenced accordingly.

5 Mr. Desai the learned counsel for the Applicant submitted that, it is due to the pressure exerted by the police, the Applicant had no other alternative but to procure gold chain from his fellow businessman by name Mr. Madanlal Jain. He submitted that, necessary receipts have been produced by the Applicant in his defence while examining the said defence witness Mr. Madanlal Jain. He further submitted that, while establishing an offence under Section 411 of the I.P.C., the prosecution has failed to bring on record 'knowledge' of the Applicant, while receiving the said property being

stolen property. He submitted that, the Applicant had bonafidely accepted the said ornaments from the accused and therefore, there is no question of Application of Section 411 of the I.P.C. to the present crime. He therefore, prayed that the present Revision Application may be allowed by quashing and setting aside both the Judgments and Orders passed by the Trial Court and the Appellate Court below.

6 Perusal of record would indicate that, the Applicant has examined Mr. Madanlal Jain as a defence witness. The said witness has produced original copy and a carbon copy of the receipt issued by him in favour of the Applicant which is at Exhibit “D-1” collectively.

The original receipt which is white in colour, apart from the other facts, also mentions that “*By Cheques No.-----/Date 21-6-99*” whereas, the carbon copy of the said receipt which is yellow in colour, does not have the said endorsement. If the Original receipt given to the Applicant by the said defence witness had the said endorsement, it could have necessarily and certainly reflected on the carbon copy retained by the said defence witness.

7 Thus, it clearly appears that, the Applicant has subsequently manipulated the said original receipt to built a defence in his favour. The defence adopted by the Applicant does not inspire

confidence in the mind of this Court. The Trial Court at the first instance and the Appellate Court after re-appreciating the entire evidence available on record, have reached to the conclusion that the Applicant is guilty of the said offence charged against him i.e. under Section 411 of the I.P.C.

8 The material available on record in the form of evidence clearly indicates that, it is the Applicant who had accepted the said stolen property from co-accused Deepak (P.W. No. 1).

After perusing the entire record and the Orders passed by both the Courts below, this Court is of the considered view that, the Judgments and Orders passed by both the Courts below do not suffer from any illegality or impropriety and the same are passed after assessing the evidence available on record in its proper prospective.

No interference is called for in the impugned Judgments and Orders.

9 Revision is accordingly dismissed.

(A.S. GADKARI, J.)