

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Revision Case Nos.2668, 2669, 2670 and 2671 of 2018

COMMON ORDER :

In CrI.R.C.No.2668 of 2018 the two petitioners are 1)Akshay Sharma @ Jabbar and 2) Sumeet Kumar Jah @ Sumit who are A.1 and A.2 in C.C.No.125 of 2016 on the file VI Addl.Chief Metropolitan Magistrate, Hyderabad, outcome of Cr.No.133 of 2015 of Tappachabutra taken cognizance for the offences punishable u/ sec.382 of IPC, against the three accused including A.3 Syed Abdul Hai Azeem Mendi @ Zingada and the trial Court after framing charges for said offence u/ Sec.382IPC put to trial and in the course of trial on behalf of the prosecution besides examining the victim-P.W.2 panch witness-P.W.1, the VII Addl.Chief Metropolitan Magistrate(ACMM) Hyderabad-P.W.3, two Investigating Officers-P.Ws.4 and 5 with reference to Exs.P.1 to P.13 including the disclosure-cum-recovery panchanama, TIP of accused persons conducted by the P.W.3 supra, and the seizure reports consequent to the disclosure or otherwise and the M.O.1-gold chain of P.W.2 with no independent evidence of accused, the trial Court, having held the accused is not entitled to the benefit of the Probation of Offenders Act(for short, 'the P.O.Act') or under Section 360CrPC, sentenced to undergo Rigorous Imprisonment (RI) for two years and to pay a fine of Rs.200/- with default sentence of RI for 15days for the offence u/ sec.382 IPC. Impugning the same, the A.1 and A.2/ revision petitioners maintained CrI.A.No.1171 of 2016 on the file of the Metropolitan Sessions Judge, Hyderabad and the same was ended in dismissal by its Judgment dt.16.08.2018 confirming the judgment of the trial Court dated 06.12.2016 in C.C.No.125 of 2016 supra. Now impugning the lower appellate Court judgment, the present revision case is filed.

2. In CrI.R.C.No.2669 of 2018 the sole petitioner is Akshay Sharma @ Jabbar supra who is A.2 in C.C.No.122 of 2016 on the file III

ACMM, Hyderabad, outcome of Cr.No.188 of 2015 of Sultan Bazar Police Station taken cognizance for the offence punishable u/ sec.382 read with 75 of IPC against A.1-Syed Abdul Hai Azeem Nehdi @ Zingada and Sec.382 read with 34IPC against A.2-the petitioner herein and A.3-Sumit Kumar Jha @ Sumit, and the trial Court after framing charges for the said offence u/ sec.382IPC put to trial and in the course of trial the trial Court, on behalf of the prosecution examined P.W.1-the informant, P.W.2-panch witness and the police officials-P.Ws.3 and 4 and the III Addl.CMM who conducted Test Identification Parade were examined with reference to Exs.P.1 to P.8 which include the TIP proceedings, seizure report, FIR and panchanama besides M.O.1-gold chain and the trial Court from said evidence with no independent evidence of accused, having held that not a fit case to apply the provisions of the P.O.Act, or under Section 360 CrPC, convicted the revision petitioner-A.2 for said offence to undergo R.I for one year and to pay a fine of Rs.500/- with default sentence of SI for three months and against which judgment when he went unsuccessful in CrI.A.No.464 of 2017 by the judgment of the Metropolitan Sessions Judge,dt.16.08.2018 confirming the trial Court's judgment in C.C.No.122 of 2016 dt.16.01.2017, the present revision is preferred impugning the same.

3. In CrI.R.C.No.2670 of 2018 the two petitioners are 1)Akshay Sharma @ Jabbar and 2) Sumeet Kumar Jah @ Sumit who are A.2 and A.3 among 4 accused including Syed Abdul Hai Azeem mendi @ Zingada and Vairal Datta hari Dass in C.C.No.127 of 2016 on the file VI Addl.Chief Metropolitan Magistrate, Hyderabad, outcome of Cr.No.70 of 2015 of Narayanaguda Police Station taken cognizance for the offence punishable u/ sec.382 of IPC, against A.1 to A.3 and u/ Sec.411 of IPC against A.4 and after framing of charge, the accused were put to trial and in the course of trial, the trial Court, on behalf of the prosecution examined the victim-P.W.5, informant- P.W.4, the VII ACMM-P.W.2, who conducted TIP

proceedings, panch witness-P.W.1 and the Investigating Officers-P.Ws.3 and 6 respectively with reference to Exs.P.1 to P.14 which include disclosure statements of A.1 to A.3, seizure reports, seizure panchanamas and TIP proceedings besides M.O.1-gold chain of victim supra and the trial Court, from said evidence having held not a fit case to apply benefit of P.O.Act or u/ Sec.360 CrPC, sentenced the A.1 to A.3 (including the petitioners A.2 and A.3 herein) for the offence u/sec.382 IPC to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.200/- with default sentence of RI for 15days and so far as the A.4 for the offence u/ sec.411IPC to undergo two yeas RI with a fine of Rs.200/- with default sentence of R.I. for 15days and it is observed that in the present case so also in C.C.No.125 of 2016 referred supra, both the sentences to run concurrently. Impugning the same, the A.2 and A.3/revision petitioners maintained Appeal vide CrI.A.No.1170 of 2016 on the file of the Metropolitan Sessions Judge, Hyderabad and the same was ended in dismissal confirming the judgment of the trial Court dated 06.12.2016 in C.C.No.127 of 2016 supra and said appeal, the present revision case is filed.

4. In CrI.R.C.No.2671 of 2018 the sole petitioner is Sumeet Kumar Jha @Sumit supra who is A.3 among three accused including A.1-Syed Abdul Hai Azeem Mehdi @Zingada and A.2-Akshay Sharma @Jabbar in C.C.No.940 of 2015 on the file of the VI Addl.Chief Metropolitan Magistrate, Hyderabad, outcome of Cr.No.77 of 2015 of Kachiguda Police Station, taken cognizance for the offence punishable u/ sec.379 IPC and the trial Court after framing charges for said offence put to trial and in the course of trial, the trial Court, on behalf of the prosecution examined P.Ws.1 to 5 viz: defacto-complainant, mediators and the police officers respectively with reference to Exs.P.1 to P.5 report, rough sketch, disclosure-cum-seizure panchanama and seizure report, from said evidence with no independent evidence of the accused, having held that the accused are not entitled to the benefit of the

P.O.Act, or Section 360 CrPC so far as the offence u/ sec.411 IPC concerned, having found not liable for the offence u/ sec.379IPC, with the observation of considering their age and family background, sentenced to undergo SI for one year by giving set off of the period of remand. Impugning the same, the A.3/ revision petitioner maintained Appeal vide CrI.A.No.89 of 2017 on the file of the Metropolitan Sessions Judge, Hyderabad and the same was ended in dismissal confirming the judgment of trial Court,dt.06.04.2016 in C.C.No.940 of 2015 supra. Now impugning the same, the present revision is filed by A.3.

5. Heard the learned counsel for the respective petitioners/ accused and the learned Public Prosecutor representing the respondent-State and perused the FIR, chargesheet and the evidence including the trial Court conviction judgment confirmed by the lower appellate Court in all the matters referred supra for the respective offences described supra.

6. So far as the CrI.R.C No.2668 of 2018 of A.1-Akshay Sharma @ Jabbar and A.2-Sumeet Kumar Jah @ Sumit is concerned, who were sentenced to undergo Rigorous Imprisonment for a period of two years with a fine of Rs.200/- each for the offence u/ sec.382 IPC from perusal of the evidence on record there is not only disclosure leading to discovery of the gold chain, pustelathadu of the victim of 3½ tulas that was snatched away by the accused from her neck by proceeding from behind on motor bicycle and there is identification of the property belongs to the victim and it is not the claim of the accused that the property belongs to them there is no explanation for their illegal possession of the stolen property of the victim and the presumption against them in the absence of explanation, leave apart they were identified including the petitioners as accused persons who have snatched the gold chain of the victim. Once such is the case, when it is proved, there is nothing to interfere with the conviction judgment but for considering their age shown between 20 to 24 years even by now reduced

sentence of two years R.I. to one year R.I. and in other respects confirmed the same. Hence, the Revision is partly allowed.

7. Coming to CrI.R.C No.2669 of 2018 of A.2-Akshay Sharma @ Jabbar from perusal it is also a similar offence committed with the modus operandi by three persons including the petitioner by proceeding on motor cycle and snatching away a gold chain of the victim of 14grams covered by the M.O.1 which the victim identified as belongs to her and also identified the accused persons who snatched her chain in the TIP proceedings and there is no claim by the accused that the property belongs to them and there is no explanation how they came into illegal possession of the stolen property of belongs to the victim. For all these reasons, there is nothing to interfere with the conviction judgment of the trial Court confirmed by the lower appellate Court including on the quantum of sentence of RI for one year and to pay a fine of Rs.500/- . Hence, the Revision is dismissed.

8. So far as the CrI.R.C No.2670 of 2018 of A.2-Akshay Sharma @ Jabbar and A.3-Sumeet Kumar Jah @ Sumit is concerned, who were sentenced to undergo R.I. for a period of two years with a fine of Rs.200/- each for the offence u/ sec.382 IPC with a default sentence of R.I. for 15days. From perusal of the evidence on record, there is not only disclosure leading to discovery of the gold chain of the victim of 1½ tulas that was snatched away by the accused from her neck by proceeding from behind on motor cycle and there is identification of the property as belongs to the victim and it is not the claim of the accused that the property belongs to them and there is no explanation for their unlawful possession of the stolen property belongs to the victim and the presumption against them in the absence of explanation, leave apart they were identified including the petitioners/ A.2 and A.3 as accused persons who have snatched the gold chain of the victim. Once such is the case, when it is proved, there is nothing to interfere with the conviction judgment of the trial Court

confirmed by the lower appellate Court but for considering their age shown between 20 to 24 years even by now reduced the sentence of R.I. for two years to R.I. for one year and in other respects confirmed the same. Accordingly, the Revision is partly allowed.

9. So far as the CrI.R.C No.2671 of 2018 of A.3-Sumeet Kumar Jah @ Sumit is concerned, who was sentenced to undergo Simple Imprisonment for a period of one year for the offence u/ sec.411 IPC. The report clearly speaks that parked Bajaj Pulsar bearing No.TS 09EA 8701 in P.I.No.255 of 2015 was stolen from the morning hours on 27.03.2015 and having noticed immediately reported to police in registration of the crime and evidence on record shows the accused were found in possession of the motor cycle and there was a disclosure statement and the defacto-complainant identified the property insofar as the petitioner/ A.3 concerned, along with others and it is from said evidence, there is no explanation from the accused much less having any RC book and title over the motor cycle belongs to the defacto-complainant, the trial Court rightly convicted for the offence u/ sec.411 IPC and acquitted for the offence u/ sec.379IPC as there is no evidence of it is the petitioners that stolen the motor cycle and confirmed by the lower appellate Court imposing sentence of SI for one year but for to say the SI is modified to R.I., there is nothing to interfere. Accordingly the appeal is dismissed.

10. It is made clear that all the sentences in all the four matters shall run concurrently and the accused persons are entitled to set off of the period undergone respectively that is the higher period in any one of the case to have set off benefit u/ sec.428CrPC read with 31 CrPC.

11. Subject to the above modification, the CrI.R.C.Nos.2668 and 2670 of 2018 are partly allowed and the CrI.R.C.Nos.2669 and 2671 of 2018 are dismissed.

12. Pending miscellaneous petitions, in these Revisions, if any, shall stand closed.

Date:08.02.2019
Vvr

Dr. B.SIVA SANKARA RAO J,

