

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 323 of 2014

1. Jilani Choudhari S/o Maulana, Aged About 32 Years,

2. Shikandar Ali S/o Parvej Aged About 32 Years,

Both are permanent R/o. Husaini Colony, Chidri Road, Bidar, Revenue and Civil District : Karnataka. Present R/o. Near City Station, Pandri, Police Station : Civil Line, Raipur, Tahsil : Raipur, Revenue and Civil District Raipur (C.G.) , District : Raipur, Chhattisgarh

---- Petitioners

Versus

- State of Chhattisgarh, Through : Police Station : Telibandha, District Raipur (C.G.), Chhattisgarh

--- Respondent

For Petitioners – Shri Raza Ali, Advocate appointed as amicus curiae.

For Respondent – Shri Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

31-01-2020

Heard.

1. This petition has been brought challenging the legality, propriety and correctness of the judgment dated 26-04-2014 passed in Criminal Appeal No.67/2014 by the Court of 7th Additional Sessions Judge Raipur, District Raipur, Chhattisgarh upholding the judgment of conviction and sentence passed against the petitioners by the trial Court.

2. The petitioners were prosecuted for offence under Section 379/34 of the IPC. Facts of the case are these, that, on 12-09-2012 the petitioners gave inducement to complainant Smt. Ramadas, that one Leelabai has been murdered and she was wearing similar jewelery that the complainant was wearing and they insisted her to hand over the jewelery to them to keep it safe. The complainant getting induced handed over the jewelery to the petitioners who wrapped the same in a paper and handed a packet back to her. The complainant took the packet to her house and when opened it she found that it contained some electrical wire and there was no jewelery. The FIR was lodged. Recovery of the stolen jewelery was made from the petitioners and police

investigated the case. After completion of the investigation charge sheet was filed against the petitioners.

The trial Court framed the charge against the petitioners for commission of offence under Section 379/34 of the IPC. After completion of the trial the judgment was passed by the trial Court on 28-02-2014 by convicting the petitioners for offence under Section 379 read with Section 34 of the IPC and sentencing them R.I. for three years to each of the petitioners. The petitioners challenged the order of conviction and sentence in the appellate Court and the appellate Court has dismissed the appeal by the impugned judgment.

3. It is submitted by amicus curiae that the prosecution has failed to prove the case against the petitioners. It is further submitted that there is issue of identification of the petitioners which has been admitted by the prosecution witnesses and the complainant herself before the Court. Further, the independent witnesses of memorandum and seizure have also not supported the prosecution case. Therefore, there was no evidence at all to pass the order of conviction against the petitioners. The trial Court has committed error in convicting the petitioners and similar error has been committed by the appellate Court in upholding the judgment of the trial Court. Therefore, it is prayed that the criminal revision be allowed.

4. Learned counsel for the State/respondent opposes the grounds raised in the petition and the submission made by learned amicus curiae and submits that the prosecution has proved its case beyond reasonable doubt. It is a case in which the complainant was the person who has witnessed the petitioners giving her inducement and receiving the property directly from her hands and this is very well supported in the evidence before the trial Court and hostility of the witnesses of memorandum and seizure is of no effect. Further, she has also identified the jewelery that has been seized from the petitioners and the seizure has been proved by the police officer conducting the investigation,

therefore, no error has been committed by the trial Court or by the appellate Court. Hence, the revision petition be dismissed.

5. Heard learned counsel for the parties and perused the record of the Court below.

6. On perusal of the evidence present in the record of the trial Court, it is found that the complainant Smt. Ramadas (PW-2) has very clearly identified the petitioners and then has narrated the whole story in which she handed over her jewelery to the petitioners on the basis of the inducement given by them and received a packet in which there was no jewelery found when she opened it. Although the witnesses of memorandum and seizure have not supported the prosecution case, however, the evidence of Investigating Officer on this point has been believed by the trial Court as well as appellate Court and it is also found that there is no reason to disbelieve the evidence of the I.O. only for the reason that he is a police official. The petitioners have not claimed on the property seized from their possession, which further goes to show that they were not the persons having entitlement over the property seized from their possession and thus evidence of seizure is finding connection with the grievance of the complainant. Therefore, after considering on the evidence and appreciating the same, I am of this view that the trial Court and the appellate Court have not committed any error in passing the judgment of conviction against the petitioners and sentencing them for the same. Therefore, this criminal revision is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge