

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

CRIMINAL REVISION CASE No.846 OF 2007

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of Cr.P.C., is filed by the petitioners/accused, challenging the judgment, dated 08.05.2007, passed in Criminal Appeal No.21 of 2004 by the V Additional Sessions Judge (FTC), Khammam, at Kothagudem, whereby, the judgment, dated 23.02.2004, passed in C.C.No.82 of 2001 by the Judicial First Class Magistrate, Yellandu, convicting the petitioners for the offences under Section 411 of IPC and sentencing them to undergo rigorous imprisonment for a period of six months and also to pay a fine of Rs.200/- each, in default, to suffer simple imprisonment for one week each, was confirmed.

2 The factual matrix that led to the filing of the present Criminal Revision Case is that on 15.11.2000 some unknown offenders committed theft of 150 kgs of cotton from the fields of P.W.1. In that connection a case in Cr.No.93 of 2000 was registered on the file of Kamepally police station under Section 379 IPC. During the course of investigation on 10.01.2001 at about 4.00 PM P.W.9 arrested the petitioners and in furtherance of their confessional statement stolen cotton was seized from P.W.4 under the cover of mediators report.

3 The case was taken cognizance under Section 411 IPC and a charge under Section 411 IPC was framed against the petitioners.

During the course of trial, prosecution examined P.Ws.1 to 9 and got marked Exs.P.1 to P.6 and M.O.1. After full fledged trial, the trial Court found the petitioners guilty of the offence under Section 411 IPC and convicted and sentenced them as stated supra.

4 Aggrieved by the said conviction and sentence imposed by the trial Court, the petitioners preferred Criminal Appeal No.21 of 2004 on the file of V Additional Sessions Judge (FTC), Khammam, at Kothagudem. However, the learned Sessions Judge dismissed the appeal vide judgment dated 08.05.2007. Hence the present Criminal Revision Case.

5 Sri A.Prabhakar Rao, learned counsel representing Sri Ch.Venkata Narayana, learned counsel for the petitioners vehemently argued that the prosecution failed to prove the guilt of the accused beyond reasonable doubt since the property involved in this case i.e. cotton was not directly recovered from the petitioners. He further submitted that the panch witness for recovery of the property from P.W.4 turned hostile and hence the recovery is not proved and that the complainants have not identified the property in any identification parade.

6 Heard Sri K.Venkateswara Rao, learned Assistant Public Prosecutor representing the Respondent - State. Perused the record.

7 As seen from the record, P.Ws.1 to 3 are the farmers whose cotton was stolen from their fields. P.Ws.4 and 5 purchased cotton from the petitioners. P.Ws.6 is the panch witness to the scene of offence. P.Ws.7 and 8 are the panch witnesses for recovery of the stolen property from P.W.4 under the cover of Ex.P.4 seizure panchanama. P.W.9 is the investigating officer.

8 There is no direct evidence to show that the petitioners have committed theft of cotton from the fields of P.Ws.1 to 3. It is only on the confession of the petitioners police recovered the cotton from P.Ws.4 and 5. The evidence of P.W.4 is that he purchased cotton from the petitioners. Therefore, the petitioners were tried under Section 411 of IPC and were convicted for the said offence.

9 Section 411 IPC says that 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 fine or with both.

10 Here in the instant case, admittedly, the stolen property was not recovered from the petitioners nor did they possess the same at the time of their arrest. It was only on their confession the property was recovered from P.Ws.4 and 5.

11 In order to establish that the property recovered from P.Ws.4 and 5 belongs to P.Ws.1 to 3, the prosecution has not taken any steps for identification of property by P.Ws.1 to 3 as stipulated under Rule 35 of the Criminal Rules of Practice. It is not the case of P.Ws.1 to 3 that they identified the property in the Court and that the property recovered and the property stolen from their fields is one and the same.

12 The basic ingredients of Section 411 of IPC have not been established in letter and spirit. No property was seized from the petitioners directly. However, in order to bring home the ingredients of Section 411 of IPC the prosecution mainly relied on the evidence of P.Ws.4, 5 and 9. However, the investigating officer has not established that the petitioners sold the cotton to P.Ws.4 and 5 since no receipts to that effect have been produced. In such circumstances it is highly improbable to believe that the cotton seized from P.Ws.4 and 5 was sold by the petitioners only.

13 Further, as seen from the record, the matter was placed before the village elders and the same was dodged for some days. P.W.1 lodged a complaint only thereafter as the same was not settled in the village panchayat. It seems that there are some disputes between the petitioners and the prosecution witnesses. Therefore, an inference may be drawn that the case might have been foisted

against the petitioners in order to wreck vengeance. All these mitigating circumstances also throw some cloud on the prosecution case.

14 For the foregoing discussion, I hold that the prosecution failed to prove the guilt of the petitioners / accused beyond all reasonable doubt. Hence the petitioners are entitled to acquittal.

15 In the result, the Criminal Revision Case is allowed, setting aside the judgment dated 08.05.2007, passed in Criminal Appeal No.21 of 2004 by the V Additional Sessions Judge (FTC), Khammam, at Kothagudem and also the judgment, dated 23.02.2004, passed in C.C.No.82 of 2001 by the Judicial First Class Magistrate, Yellandu. Bail bonds of the accused shall stand cancelled. Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

JUVVADI SRIDEVI, J.

Date: 08.07.2022

Kvsn