

HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

CRL.Rc.Nos.300 of 2016, 524 and 561 of 2016

Crl.Rc.No.300 of 2016

This Criminal Revision Case, under Sections 397 and 401 of Cr.P.C., is directed against the judgment, dated 08.01.2016, passed in Criminal Appeal No.66 of 2015 by the VI Additional District and Sessions Judge at Siddipet confirming the judgment in C.C.No.1068 of 2015, dated 24.06.2015, passed by the Additional Judicial Magistrate of First Class, Gajwel convicting the petitioner/A-1 for the offence under Section 379 IPC and sentenced to undergo Rigorous Imprisonment for a period of two years and also to pay fine of Rs.2,000/- in default of payment of fine to undergo Simple Imprisonment for a period of two months.

Crl.Rc.No.561 of 2016

This Criminal Revision Case, under Sections 397 and 401 of Cr.P.C., is directed against the judgment, dated 08.01.2016, passed in Criminal Appeal No.66 of 2015 by the VI Additional District and Sessions Judge at Siddipet confirming the judgment in C.C.No.1068 of 2015, dated 24.06.2015, passed by the

Additional Judicial Magistrate of First Class, Gajwel convicting the petitioner/A-2 for the offence under Section 379 IPC and sentenced to undergo Rigorous Imprisonment for a period of two years and also to pay fine of Rs.2,000/- in default of payment of fine to undergo Simple Imprisonment for a period of two months.

CRL.Rc.No.524 of 2016

This Criminal Revision Case, under Sections 397 and 401 of Cr.P.C., is directed against the judgment, dated 08.01.2016, passed in Criminal Appeal No.78 of 2015 by the VI Additional District and Sessions Judge at Siddipet confirming the judgment in C.C.No.1068 of 2015, dated 24.06.2015, passed by the Additional Judicial Magistrate of First Class, Gajwel convicting the petitioners/A-3, 4, 6 and 7 for the offence under Section 379 IPC and sentenced to undergo Rigorous Imprisonment for a period of two years and also to pay fine of Rs.2,000/- in default of payment of fine to undergo Simple Imprisonment for a period of two months.

2. Since these revisions arose out of the same crime and the same calendar case, they are being disposed of by way of this common order.

COMMON ORDER:

3. Heard learned counsel for the petitioners and the learned Assistant Public Prosecutor appearing for the respondent-State. Perused the material on record.

4. The facts of the case, in brief, are that on 02.09.2014 at 2.30 pm, the *de facto* complainant by name P.Srinivas (PW.1) Assistant Engineer, (Operations), Gowararam lodged a complaint stating that Babburi Chandram (PW.2) and other farmers informed that on the early hours on 02.09.2014 some unknown persons committed theft of three transfer Copper Coils and the Transformer Oil from the Transformer situated at Ippalagudem and another Transformer Copper coils and Transformer oil from Pathur Village by removing HG Fuses. Immediately, he rushed to the scene and confirmed about theft of Transformers winding coils and Transformer oil from three transformers at Ippalagudem village and another Transformer located at Pathur village removing HG fuses. On the basis of said complaint,

a case in crime No.104 of 2014 for the offence under Section 379 IPC was registered by K.Devidas,A.S.I. of police (PW.8) and investigated into. During the course of investigation, he recorded the statements of witnesses Pws.1 to 3, visited the scene of offence and conducted panchanama and drawn rough sketch. On 21.09.2014 at 4.30 hours when the police were conducting vehicle check-up, one Tata Indica Car (Red colour) bearing No.AP 09 DE 7655 was coming from Mulugu side to Hyderabad side and on seeing them, the driver of car turned their car back and immediately, they chased them and stopped the vehicle and they found seven persons in the car along with 150 Kg. of copper wire bundles in a white plastic bag. It is stated that they alleged to have confessed about committing about 30 offences of (16) Police Stations come under the jurisdiction of Medak and Ranga Reddy District. On that their confessional statements were recorded and recovered the instruments and seized the property under the cover of panchanama in the presence of mediators. After completion of investigation, charge sheet was filed before the trial Court against A-1 to A-7 for the aforesaid offence and the same was registered as C.C.No.1068 of 2015.

5. On appearance before the trial Court, the petitioners pleaded not guilty to the charges. In support of their case, the prosecution examined P.Ws.1 to 8 and marked Exs.P-1 to P-5. Mo.1 was also marked. On consideration of the evidence available on record, the learned Magistrate convicted the petitioners and another (A-5) for the offences under Section 379 IPC and imposed the sentences, as stated above. On appeal being filed by the petitioners in Crl.A.Nos.66 and 78 of 2015 respectively, the conviction and sentence of the petitioners and another (A-5) for the said offence was confirmed. Aggrieved by the same, the present revision is filed by the petitioners.

6. Learned counsel for the petitioners vehemently contended that the entire case is based on confessional and recovery panchanama and the Courts below misconstrued Section 27 of the Indian Evidence Act, 1872 (for short "the Act") and also submits that there are discrepancies in the prosecution case regarding apprehension of the petitioners and another accused and seizure of the property. The conviction and sentence is not tenable and the same is liable to be set aside. Therefore, prayed to allow the revisions.

7. Learned Assistant Public Prosecutor submits that both the Courts below rightly appreciated the evidence on record and convicted and sentenced the petitioners after taking into consideration of the totality of the circumstances. As such, there is no illegality or irregularity in the impugned orders warranting interference by this Court and prayed to dismiss the revisions.

8. Thus, after hearing the submissions of both the counsel and having considered minutely, both the oral and documentary evidence and having gone through the judgments of the Courts below, the point that arises for consideration is; whether the orders of Courts below in convicting the petitioners suffer from any infirmity or illegality warranting interference by this Court?

9. It is mainly contended by learned counsel for the petitioners that Section 27 of the Act is not applicable to the facts and circumstances of the case as the alleged property was recovered from the car and as the accused was apprehended and car was taken to the police station, which contains stolen property. The confessional statement is hit by Section 26 of the Act and such confession of any

person cannot be proved against him and on this ground, the petitioners are entitled for acquittal.

10. The prosecution evidence discloses that PW.1 lodged a complaint alleging theft of subject property mentioned in the complaint. On the basis of said complaint, aforesaid crime was registered, visited scene of offence and examined and prepared the scene of offence panchanama in the presence of PW.4 and another. The evidence of PW.1 corroborated by the evidence of PWs.2 and 3, who, are the circumstantial witnesses about the commission of theft of the property. The evidence of PWs.2 and 3 is supported by the evidence of Pw.4 panch witness supports the contention of PW.1 that some unknown offenders committed theft of Mo.1. PW.6 in his evidence deposed that during the course of investigation, he apprehended A-1 to A-7 and recorded the confessional and seizure panchanama in the presence of PW.5 and one Saireddy Ram Reddy (LW.8) and seized the property pertaining to several other crimes including the case property pertains to this case. The evidence of PW.5 corroborates the testimony of PW.6 about the confession of A-1 to A-7 leading to recovery of MO.1. PW.5 is the panch witness and

identified the petitioners and another accused and deposed about the confession of accused and seizure of MO.1. Since the evidence of PW.5 is cogent, convincing and coupled with the evidence of other witnesses, the trial Court believed the evidence of prosecution witnesses and held that the petitioners and another (A-5) have committed theft of MO.1.

11. In **SHAHAJA @ SHAHAJAN ISMAIL MOHD. SHAIKH v. STATE OF MAHARASHTRA**¹, the Apex Court dealt with the conditions necessary for the applicability of the Section 27 of the Act, which are as under:

- (1) Discovery of fact in consequence of an information received from accused;
 - (2) Discovery of such fact to be deposed to;
 - (3) The accused must be in police custody when he gave informations and
 - (4) So much of information as relates distinctly to the fact thereby discovered is admissible
- Two conditions for application –
- (1) information must be such as has caused discovery of the fact; and
 - (2) information must relate distinctly to the fact discovered .

The Apex Court in the judgment also held at para No.44 as under:

“ The scope and ambit of Section 27 of the Act were illuminatingly stated in **Phulukuri Kottaya v. Emperor**, AIR (1947) PC 67, which have become *locus classicus*, in the following words:

¹ 2022 Live Law (SC)596

"It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed 'A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

12. Coming to the facts of the present case, the property was recovered on the information given by the petitioners and another accused. The property was seized from the car, in which the petitioners were proceeding. The confessional statements of the petitioners and another accused were recorded and pursuant to the confession on the information given by the petitioners and another accused, the property was seized from the car. The said issue was also raised before the Courts below and on being appraised the same, it was held that the recovery of the property at the instance of petitioners and another accused was under Section 27 of the Act which makes the discovery of fact in consequence of information given by the accused is held admissible.

13. The Courts below clearly dealt with the evidence, particularly, the confessional statements of the petitioners and another accused and recovery of the property with the cogent and convincing evidence of independent witnesses and also the other evidence and rightly appreciated the evidence, both oral and documentary and found the petitioners guilty for the alleged offence. I do not find any illegality in the judgments of the Courts below and have rightly arrived at just conclusion about the guilt of the petitioners.

14. In view of the reasons stated above, the impugned judgments and conviction recorded by the trial Court and confirmed by the appellate Court for the aforesaid offence does not, therefore, call for any interference.

15. Here, it is apt to state that Sections 397 to 401 of Cr.P.C., confer only limited power on the Revisional Court to the extent of satisfying about the legality, propriety or regularity of the proceedings or orders of the lower Court and not to act like appellate Court for other purposes, including the recording of new findings of fact on fresh appraisal of evidence. The object of the Revisional jurisdiction is to set right a patent defect or an error of jurisdiction or law. In the

instant case, a perusal of the material placed on record reveals that there is no illegality, impropriety or irregularity in the judgments under challenge. This Court does not find any merit in this revision.

16. Coming to the quantum of sentence, learned counsel for the petitioners submits that the petitioners are having family and children and they are dependants on them. Hence, he prayed for reduction of the sentence of imprisonment.

17. In the instant case, having given thoughtful consideration to all the aspects of the matter, this Court is of the considered opinion that the facts mentioned above would certainly be special reasons for reducing the substantive sentence, while maintaining the conviction against the petitioners. The petitioners were in judicial custody from 26.09.2014 to 24.06.2015 and the said period has been already given set off under Section 428 Cr.P.C. by the trial Court. Considering the totality of the circumstances, this Court deems it appropriate that if the sentence of imprisonment imposed against the petitioners is modified to the period already undergone by them, the same would sub-serve the ends of justice.

18. Therefore, while maintaining the conviction recorded against the petitioners/A-1, A-2, A-3, A-4, A-6 and A-7, the sentence of imprisonment imposed by the trial Court and confirmed by the appellate Court, is reduced to the period of imprisonment already undergone by them. However, the sentence of fine imposed against them remains unaltered.

19. With the above modification, these criminal revision cases are disposed of. Pending miscellaneous petitions, if any, stand closed.

A.SANTHOSH REDDY, J

12.09.2022
Nvl

