

HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

CRL.Rc.Nos.229 and 531 of 2016

Crl.Rc.No.229 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.65 of 2015 by the VI Additional District and Sessions Judge at Siddipet confirming the judgment in C.C.No.1058 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.531 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.80 of 2015 by the VI Additional District and Sessions Judge at Siddipet confirming the

judgment in C.C.No.1058 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, learned Assistant Public Prosecutor appearing for the respondent-State. Perused the material on record.

4. The facts of the prosecution case, in brief, are that on 02.05.2014 at 11.00 hours, the *de facto* complainant by name B.Ramdas (PW.1) Assistant Engineer, (Operations), Mulugu lodged a complaint stating that he was informed about theft of 1 No.25 KVA DTR and 3 Nos.16 KVA DTRs at Markook Village and also at

various places in the limits of Markook Village by unknown persons on 01.05.2014 during night time. Immediately, he rushed to the scene and confirmed about theft of HV and LV coils, oil of transformers, core laminations from the idle transformer tank leaving the transformer tank idle. On the basis of the said complaint, a case in crime No.80 of 2014 for the offence under Section 379 IPC was registered by B.Kamalakar, the Sub-Inspector of police (PW.5) and investigated into. During the course of investigation, he recorded the statement of PW.1, visited the scene of offence and conducted the panchanama and drawn rough sketch. On 23.09.2014 at 5.30 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 the petitioners and other accused 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 the petitioners/A-1, A-3, A-4, A-6 and A-7 and other accused for the aforesaid offence and the same was registered as C.C.No.1058 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 5 and marked Exs.P-1 to P-5. MOs.1 to 16 were also marked. On consideration of the evidence on record, the learned Magistrate convicted the petitioners along with other accused 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.65 and 80 of 2015 respectively, the conviction and sentence of the petitioners 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 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 counsel and having considered minutely both the oral and documentary evidence and 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 petitioners and other accused was apprehended and the 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 as stated in the complaint. On the basis of said complaint, the aforesaid crime was registered, PW.5 visited the scene of offence and examined and prepared the scene of offence panchanama in the presence of PW.2 and another. PW.4 in his evidence deposed that during the course of investigation, he apprehended the petitioners and other accused and recorded the confessional and seizure panchanama in the presence of PW.3 and one Saireddy Rami Reddy (LW.5) and seized the property pertaining to several other crimes including the case property pertains to this case. The evidence of PW.3 corroborates the testimony of PW.4 about the confession of the petitioners and other accused leading to recovery of MOs.1 to 16. PW.3 is the panch witness and identified the petitioners and other accused and deposed about their confession

and seizure of subject property. Since the evidence of PW.3 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 have committed theft of MOs.1 to.16.

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 above 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:

"It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered

¹ 2022 Live Law (SC)596

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 along with other accused. The property was seized from the car, in which the petitioners along with other accused were proceeding. Their confessional statements were recorded and pursuant to the confession on the information given by them, 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 the petitioners and other accused was under Section 27 of the Act which makes the discovery of fact in consequence of information given by the petitioners and other accused is held admissible.

13. The Courts below clearly dealt with the evidence, particularly, the confessional statements of the petitioners along with other

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 the 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 depending on them. Hence, he prays for reduction of 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 24.09.2014 to 24.06.2015 and the said period has already been 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, 3, 4, 6 and 7, the substantive 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

Total 272 days