

(1990) 11 AP CK 0032

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 263 of 1989

Edupuganti Ramulu

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 23-11-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 411

Citation : (1991) 1 ALT 150

Hon'ble Judges : Bhaskar Rao, J

Bench : Single Bench

Advocate : S. Sreeramachandra Murthy, for the Appellant; The Additional Public Prosecutor for Respondent No. 1 and M. Guru Dutt, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Rao, J.—This is a revision filed by A-1 against the order of Addl. Sessions Court, Eluru, in CrI. A. No. 144/88 rejecting return of money recovered from him while acquitting him of the offence u/s 411 I.P.C. by allowing his appeal.

2. The brief facts necessary for disposal of this revision are : One Subba Rao, examined as P.W. 1, made a complaint to the police alleging that his money, to a tune of Rs. 33,000/-, was committed theft of on 4-5-85 at about 8-30 p.m. when it was kept in a bag left to the cycle of P.W.1 The police during the course of investigation arrested A-2 on 4-6-85 and recovered Rs. 1,200/- from him in pursuance of a confessional statement made by him. In his confessional statement, A-2 involved A-1 and A-3. Therefore, A-1 was also arrested and an amount of Rs. 10,000/-was recovered from him. Thereafter all the three accused were tried for the offence u/s 411 I.P.C. The trial Court convicted all the three accused u/s 411 I.P.C. and sentenced each of them to suffer imprisonment for one year, while ordering return of the money recovered to P.W. 1. The matter was carried in appeal before the Sessions Court. The contention before the lower appellate Court is that the money recovered from A-1 represents the sale-

proceeds of his scooter and that the ingredients of the offence u/s 411 I.P.C, are not made out warranting conviction and sentence of A-1. It was further submitted, that the accused was not only entitled to the acquittal but also to return of the money recovered from him. However, the lower appellate Court while acquitting the accused, directed return of the money of Rs. 11,200/- to P.W. 1 mainly on the ground that A-1 could not prove that the amount of Rs. 10,000/- recovered from him represents the sale-proceeds of the scooter and that no claim for return of the money was made in the Grounds of Appeal. In support of its order of acquittal, the lower appellate court assigned the reason "the accused No. 1 appellant herein is acquitted by giving him the benefit of doubt, as the prosecution has not established the offence....".

3. The learned counsel for the petitioner submitted that when once the lower appellate Court found that the prosecution could not establish the offence u/s 411 I.P.C, against the petitioner-A-1, it ought to have directed return of the money recovered from him to the petitioner-A-1 alone.

4. It is a fact in this case that the accused was acquitted by the lower appellate Court of the offence u/s 411 I.P.C. To constitute an offence u/s 411 I.P.C, there should be dishonest receipt or retention of stolen property, knowing or having reason to believe the same to be stolen property. Though it is not so stated specifically while acquitting the petitioner, even assuming that the acquittal was on the ground that the petitioner was having the money in his possession without knowing or having reason to believe the same to be stolen property still in this case there is absolutely no iota of evidence adduced by the prosecution to connect the money recovered from the petitioner to the one lost by P.W. 1. In this case it is to be borne in mind that the property complained to have been lost is money of Rs. 33,000/- and no particulars as regards the denomination or numbers of currency notes or other details were noted either in Ex. P-1 report or in his evidence before the Court by P.W. 1 so as to establish that the money of Rs. 10,000/- recovered from the petitioner constitutes part of the stolen money. Further it is the case of the petitioner that the money recovered from him represents proceeds of his scooter sold away. It is again to be noted that it is A-2 that involved A-1 the petitioner in his confessional statement, pursuant to which he was arrested and the amount of Rs. 10,000/- recovered from A-1. In the circumstances, even assuming that P.W. 1 has lost Rs. 33,000/- in cash it cannot be concluded that the cash of Rs. 10,000/- admittedly recovered from P.W. 1 constitutes part of that stolen money. Consequently, it is the petitioner alone that is entitled to the return of the money of Rs. 10,000/- recovered from him. It is noteworthy at this stage that the Supreme Court also in *Usha Floor Mills v. Dayanand Tanwar*, 1983 Cr. Appeals Reporter page 352 held that in an offence u/s 411 I.P.C, when the property recovered is not proved to be stolen property, the amount cannot be directed to be paid to the party, from whom some amount was committed theft of.

5. It is contended by the learned counsel for the 2nd respondent that the

petitioner at no stage during the trial, much less in his examination u/s 313 Cr. P.C., made a claim to the money as his own and therefore the money cannot be directed to be returned to him. In reply to this contention, Mr. S. Sreeramachandra Murthy drew my attention to a decision of the Patna High Court in *Sita Ram Vs. The State*, wherein it is held that it is unfair to withhold the delivery of the property to the accused on the ground that he had not claimed it as his own during the trial. In view of this decision of the Patna High Court, the contention of the 2nd respondent cannot be countenanced.

6. The learned counsel for the petitioner also drew my attention to a decision of the Supreme Court in *Sir Kikabhai Premchand Vs. Commissioner of Income Tax (Central), Bombay*. There, the accused stood his trial for offences under Sections. 449 and 372, Gwalior Penal 1983 Cr. Appeals Reporter Code. The trial Court acquitted him holding that the sum recovered from the accused belonged to him and that no case was established against him. So holding the trial Court directed return of the sum recovered to the accused. Against this direction, the widow of the complainant preferred a revision to the High Court and obtained an order in her favour for return of the money. This order of the High Court when challenged before the Supreme Court, it was held that unless it was found that an offence was committed in respect of the sum involved there was no jurisdiction to the High Court to order payment of the amount to the widow of the complainant. In the case on hand also the accused was acquitted of the offence for which he was tried by the appellate Court and no iota of evidence was adduced to connect the money lost to the money recovered. In view of this, as submitted, the above decision of the Supreme Court is applicable to the instant case and accordingly there should follow a direction to return the money to the petitioner-accused.

7. In *Dhanna Vs. The State and Another*, it is held that the ordinary rule is that where an accused person is acquitted of an offence in relation to some property and the property has been recovered from him, the court should order such property to be returned to him. If the Court thinks it proper to depart from this ordinary rule, it must give its reasons for doing so and it is conceivable that such an order may properly be passed where the accused disclaims any connection with the property recovered. In the instant case, neither the complainant P.W. 1 nor the State has taken any ground that at any point of time during the course of all these proceedings, the accused-petitioner had disclaimed the money as not belonging to him. On the other hand, the stand of the petitioner is that the money represents the sale-proceeds of his scooter. Thus, there does not appear to be any ground to depart from the ordinary rule that whenever an accused is acquitted of the offence in relation to some property recovered from him, the Court should order such property to be returned to him.

8. In view of the foregoing discussion and reasoning, there shall be a direction to return the money of Rs. 10,000/- recovered from the petitioner to him, by setting aside the order of the lower appellate Court in this regard. The revision is

accordingly allowed.