

(2001) 06 KAR CK 0042

In the Karnataka High Court

Case No : Criminal Revision Petition No. 9 of 2001

K.R. Haris Chandra Naik

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 11-06-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 452, 517

Citation : (2001) ILR (Kar) 4727 : (2001) 4 KarLJ 587 : (2001) 3 KCCR 2168

Hon'ble Judges : G. Patribasavan Goud, J

Bench : Single Bench

Advocate : Sri D.R. Nagaraja, for the Appellant; Sri Bhavani Singh, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. The present petitioner's son Sampath Kumar was one of the four accused who were tried for an offence punishable u/s 397 of the IPC before the learned Additional Sessions Judge, Chitradurga, in S.C. No. 40 of 1996. The said Sampath Kumar died, and the case against him stood abated and it was only the other three accused vis., A-1, A-2 and A-4 that faced the trial and eventually came to be acquitted of the said offence by the judgment and order of the learned Sessions Judge dated 16-2-1999.

2. It was the case of the prosecution that, in course of investigation, petitioner's son A3-Sampath Kumar volunteered information, led the police and panchas to the house jointly occupied by himself and his father, the petitioner, and produced cash of Rs. 5,000/-, which was part of the amount in respect of which the offence had been allegedly committed. In paragraph 12 of the judgment, the learned Sessions Judge discusses as to how P.W. 11-P. Thippeswamy and P.W. 12-K.P. Annappa, the two panchas for the mahazar in respect of said seizure of Rs. 5,000/-at the instance of A3-Sampath Kumar, failed to support the case of the prosecution and were treated hostile by the prosecution. In paragraph 25 of the judgment, the learned Sessions Judge also points out as to how the evidence of

the I.O. with regard to seizure could not be believed on account of the panch witnesses having turned hostile and therefore it just is not being possible for the learned Sessions Judge to hold that the prosecution has proved the recovery. Ultimately, when the three remaining accused came to be acquitted, so far as the disposal of the property is concerned i.e., amount of Rs. 5,000/- marked as M.O. 7, was forfeited. Seeking return of the said sum, the petitioner approached the learned Trial Judge, who by the impugned order, has declined to return.

3. If the above said conclusions reached by the learned Trial Judge in paragraphs 12 and 25 referred to above were to be made the basis to decide as to whether the amount of Rs. 5,000/- should or should not be returned to the petitioner, then, the petitioner's request u/s 452 of the Cr. P.C. needs to be negated for the reason that the very recovery of Rs. 5,000/- from his house is found not proved. But, the very case of the prosecution was that the said sum of Rs. 5,000/- was recovered in the house, jointly occupied by the petitioner and his son Sampath Kumar. The case against Sampath Kumar has stood abated. The entire case of the prosecution is held not proved and the remaining three accused have come to be acquitted. What is of importance is that, at the end of paragraph 22 of the judgment, the learned Sessions Judge categorically stated that the accused are not the persons who have robbed the complainant. In the background of this conclusion, the question is as to whether, because P.Ws. 11 and 12, the panchas to the recovery of Rs. 5,000/-, have turned hostile and on that ground, because the evidence of I.O. regarding recovery is held unacceptable, the recovery of Rs. 5,000/- from the house jointly occupied by the petitioner and his son Sampath Kumar itself cannot be said to have been proved. While such proof certainly can be said to be lacking for the purpose of convicting the accused, it is the settled position that the very panchanama can be relied upon while enquiring into the questions as regards the disposal of the property concerned. In *Veerabhadrappe v Govindamma and Others*, this Court pointed out that, when the Court considers the question of disposal of property produced before it u/s 517 of the Cr. P.C., it would be open to the Court to rely on the materials produced before it though the same may not be strictly admissible as evidence against the accused in the trial for the offence with which he was charged. This Court then referred to a decision of the Bombay High Court in *Queen Empress v Tribhuvan Manekchand*, wherein the Bombay High Court had held that the statements made to the police by the accused persons as to the ownership of property which was the subject-matter of the proceedings against them, although inadmissible as evidence against them at the trial for the offence with which they were charged, were admissible as evidence with regard to the ownership of the property in an enquiry held under the Criminal Procedure Code. This Court also had reiterated the same view in *Pohlu v Emperor*, wherein it was pointed out that, though there is a bar in Section 25 of the Indian Evidence Act, or in Section 162 of the Cr. P.C. for being made use of as evidence against the accused, his statement could be made use of in an enquiry u/s 517 of the Cr. P.C. (old) when determining the question of return of property. Then the decision of

Rajasthan High Court in M/s. Dhanraj Baladeokishan through its partner Dhanraj and Another v State, wherein the said two earlier decisions had been followed, was referred to. The Rajasthan High Court pointed out that, even a confessional statement, which is otherwise inadmissible in evidence against the accused, can be made use of for determining the question of return of property under the said Section 517 of the Cr. P.C. (old).

4. In the light of the principles enunciated in the said decision of this Court in Veerabhadrapa's case, supra, in which the other three decisions had been referred to, it could be seen that, for the purpose of determining u/s 452 of the Cr. P.C. as to whether or not the amount of Rs. 5,000/- could be returned to the petitioner, the panchanama concerned can be certainly looked into even though P.Ws. 11 and 12, the panch witnesses, have turned hostile and even though the evidence of I.O. in that regard is found unacceptable as against the accused. On the basis of the said panchanama, therefore, it could be said that the amount of Rs. 5,000/- had been recovered from the house jointly occupied by the petitioner and his son. Since the Trial Court had categorically said that the accused were not the persons who had robbed the complainant, the amount of Rs. 5,000/-, therefore, needed to be returned to A3-Sampath Kumar and his father, the petitioner, and since A-3 is no more, to his father, the petitioner,

5. Petition is allowed. Impugned order is set aside. The amount of Rs. 5,000/- concerned is directed to be returned to the petitioner.