

(2024) 01 KAR CK 0008

In the Karnataka High Court

Case No : Criminal Revision Petition No. 893 Of 2021

Yashodha

APPELLANT

Vs

State By K R Police Station Represented By Public Prosecutor
Mysore District Mysore - 570004

RESPONDENT

Date of Decision : 02-01-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 397, 401
Indian Penal Code, 1860 — Section 406, 420

Citation : (2024) 01 KAR CK 0008

Hon'ble Judges : J.M. Khazi, J

Bench : Single Bench

Advocate : Premkumar C S, Channappa Erappa

Final Decision : Dismissed

Judgement

J.M. Khazi, J

1. This criminal revision petition filed under Section 397 r/w 401 of Cr.P.C, is by the accused challenging her conviction and sentence passed by the trial Court for the offence punishable under Section 420 I.P.C, which is confirmed by the Session Court by dismissing the appeal filed by her.

2. For the sake of convenience, the parties are referred to by their rank before the trial Court.

3. Based on the complaint filed by Smt.Jayanti, after conducting detailed investigation, the respondent police filed charge sheet against the accused for the offences punishable under Sections 406 and 420 I.P.C.

4. In support of the prosecution case 7 witnesses are examined as PWs-1 to 7, Ex.P1 to 9 and MOs-1 and 2 are marked.

5. During the course of statement under Section 313 Cr.P.C, the accused has denied the incriminating evidence led by the prosecution.

6. Accused has not led any defence evidence

7. Accepting the oral and documentary evidence placed on record, the trial Court convicted the accused and sentenced her to undergo simple imprisonment for six months and pay fine Rs.10,000/- each for the offences punishable under Section 406 and 420 I.P.C with default sentence.

8..Aggrieved by the same accused filed criminal appeal before the Sessions Court. Though the Session Court partly allowed the appeal and set aside the conviction for the offence punishable under Section 406 I.P.C, it has confirmed her conviction for the offence punishable under Section 420 I.P.C.

9. It appears the State has not challenged the acquittal of accused for the offence punishable under Section 406 I.P.C.

10. Aggrieved by her conviction for the offence punishable under Section 420 I.P.C, the accused is before the Court contending that the impugned judgments and orders are against the weight of the evidence and probabilities of the case. Both the Courts have failed to notice that the ingredients of offence are lacking, yet erroneously proceeded to convict the accused which is bad in law. The Courts below have also not appreciated the fact that the incident took place in 2012 whereas the complaint is filed during 2015. There are number of contradictions in the testimony of PW-2 to 7 and the same is not carefully scrutinized by both Courts. The case of the prosecution is totally false. Based on the evidence on record, the conviction is not sustainable and prays to allow the petition, set aside the conviction and sentence of the accused and acquit her.

11. On the other hand learned High Court Government Pleader representing the State has supported the impugned judgments and orders and sought for dismissal of the petition.

12. Heard arguments of both sides and perused the record.

13. According to the prosecution, the gold jewels, which is the subject matter of the complaint consisting of a chain and ear hangings belongs to the complainant. Accused who was known to her borrowed them under the pretext that she would make her sisters to wear them and take pictures to send to the prospective grooms. However, she failed to return them. When the complainant went in search of accused, she came to know from her neighbours that accused is in the habit of borrowing Jewels belonging to others and pledging them. Consequently, complainant made several enquiries with number of pawn brokers and ultimately found that her gold jewels were pledged with P.Mahaveer Chand pawn brokers belonging to PW-2. During investigation, the Investigating Officer has collected notarized copies of the duplicate pawn tickets, maintained with the pawn broker.

14. At the trial, the accused has taken up a defence that the complainant was running a chit fund and she was one of the participants. The complainant was liable to pay accused money regarding the said chit fund transaction and therefore complainant on her own pledged the gold ornaments, collected the

money and handed over to the accused and filed a false complaint against her. By taking such defence, the accused is admitting the ownership of complainant over the gold ornaments.

15. During the course of her evidence, complainant who is examined as PW-1 has reiterated the complaint averments. During her cross-examination, she has denied that she was running a chit business and accused was a participant and for paying money due to the accused, she pledged the gold ornaments in question and handed over money to the accused.

16. In the light of specific defence taken by the accused, the evidence of PW-2, Mahaveer Chand his brother PW-4, Nemichandra, who is working in the shop of PW-2 are relevant. During the course of his examination-in-chief, PW-2 Mahaveer Chand, with whom the gold ornaments in question were pledged has deposed that on 05.03.2012 both complainant and accused came to his shop and pledged the gold ornaments and collected Rs.1,85,000. He has stated that it was accused who pledged the gold ornaments in the name of complainant and he paid the money to accused and the pawn tickets are signed by both complainant and accused. He has stated that the complainant has signed the pawn ticket as nominee whereas he has signed as pawner.

17. PW-2 has also deposed that before the complaint was filed both complainant and accused entered into an agreement, whereby complainant would get the ornaments released by paying the money and in this regard, a letter of understanding is given to him. However, PW-2 has not produced the letter of understanding given to him, by claiming that he is only having a xerox copy. If the letter of understanding is given to PW-2 either by complainant or by both complainant and accused, the original letter is expected to be with him. In the absence of the same, it appears only to safeguard his interest, PW-2 is making up a case that both complainant and accused approached him with an understanding between them.

18. Since PW-2 resiled from his statement given to the Investigating Officer, he is treated as hostile and cross-examined by the prosecution, wherein he has admitted that it is accused who pledged the gold ornaments with him and during 2012 complainant came and enquired about it and at the time he came to know that the gold ornaments belong to the complainant and she undertook to get them released and at this stage he has taken the signature of complainant in the column meant for nominee. He has also admitted that before the police he has not stated that when accused came to pledge the ornaments, complainant was with her. Once again, during the course of cross-examination by the defence, PW-2 has repeated his old story of both complainant and accused pledging the ornaments together.

19. At this stage, it is also relevant to note that on 10.05.2012, PW-2 Mahaveer Chand has got issued a legal notice to accused as well as complainant wherein he has stated that it was the accused who pledged the gold ornaments claiming that

they belong to her and borrowed the money and pawn tickets were issued to the accused. However, later complainant approached him and disclosed the fact that the gold ornaments belongs to her and they were illegally pledged by the accused and at that time PW-2 has taken a letter of understanding from the complainant. In the notice, PW-2 has alleged that both complainant and accused together have played a foul play to cheat him and called upon them to get the ornaments released, failing which he would take legal action.

20. The contents of legal notice also support the case of the prosecution that it is the accused who pledged the gold ornaments with the PW-2 and he is making up a case that complainant was also with her. In the light of the admissions given by PW-2, the testimony of his brothers who are examined as PW-3 and 4 are not of much help to improve contention of PW-2 or the defence of accused.

21. At this stage, it is necessary to examine the contents of the pawn tickets at Ex.P2 and 3. Admittedly, there are the duplicate copies maintained with the pawn broker i.e PW-2 Mahaveer Chand. The Investigating Officer has not seized the original pawn broker receipts from the accused. The possibility of she having destroyed them cannot be ruled out. Anyhow, it is not in dispute that the gold ornaments in question were pledged with PW-2 Mahaveer Chand and Ex.P2 and 3 are the duplicate copies maintained by him. Though PW-2 has claimed that the gold ornaments were pledged by both complainant and accused, in the column meant for signature of the pawner, the signature of accused is taken and it also refer to the amount received by her.

22. Though the entire document at Ex.P2 and 3 are the duplicate copies, the writing of address of the complainant and her signature in the column for nominee are in the original. It supports the evidence of complainant that after she went in search of the gold ornaments and came to know that accused has pledged them with the PW-2 Mahaveer Chand, he took her signature to the pawn tickets and also inserted her address. The legal notice at Ex.P8 also supports the original contents of Ex.P2 and 3 that the gold ornaments were pledged by accused alone and subsequently complainant came and enquired about them. It is the defence of accused that complainant on her own pledged her ornaments and gave the money to her. If complainant is the one who pledged the gold ornaments, her signature would be forthcoming in the column for signature of pawner and not in the column meant for nominee. If the gold ornaments are pledged by the complainant, then nominee would have been someone who is related to her and not complainant herself.

23. It appears after the complainant came and enquired about the gold ornaments, realising that accused is not the owner, PW-2 Mahaveer Chand has taken the signature of complainant in the column nominee and also made to write her address in the column meant for description of the ornament pledged. Only to safeguard his interest, later he has changed his version by claiming that both the complainant and accused together pledged the gold ornaments. PW-2 has admitted a suggestion made by the defence that at the instance of

complainant, he has given the legal notice at Ex.P8. As a shrewd business man, dealing with customers day in and day out, it cannot be excepted that at the instance of complainant he would issue a legal notice contrary to the transaction that has taken, wherein he has paid a total sum of Rs.1,85,000/- to the accused.

24. Through the oral and documentary evidence placed on record, the prosecution has proved beyond reasonable doubt that the gold ornaments in question belongs to the complainant and accused cheated her by collecting them under the guise of getting photographs of her sisters wearing them and return. Instead of returning them, she has pledged the gold ornaments with PW-2 Mahaveer Chand and collected Rs.1,85,000/-. Appreciating the oral and document placed on record, both the trial Court and Sessions could have come to a correct conclusion that the accused has committed the offence punishable under Section 420 I.P.C. This Court does not find that the impugned judgments and orders have caused gross miscarriage of justice or manifest illegality or perversity calling for interference under Section 397 r/w 401 Cr.P.C. In the result, the petition fails and accordingly the following:

ORDER

- (i) Petition filed by the accused under Section 397 r/w 401 CRPC is dismissed.
- (ii) The impugned judgment and order dated 28.05.2021 in CrI.A.No.231/2019 on the file of III Addl.District and Sessions Judge, Mysuru is hereby confirmed.
- (iii) The Registry is directed to send back the trial Court and Sessions Court records along with copy of this order forthwith.