

Suresh Vs. State Of Karnataka By

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Court : Karnataka

Decided On : Mar-04-2024

Judge : S Rachaiah

Appeal No. : CRL.RP 798/2017

Appellant : Suresh

Respondent : State Of Karnataka By

Judgement :

- 1 - NC:

2024. KHC:8860 CRL.RP No.798 of 2017 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE4H DAY OF MARCH, 2024 BEFORE THE HON'BLE MR JUSTICE S RACHAIAH CRIMINAL REVISION PETITION No.798 OF 2017 BETWEEN: SURESH, AGED ABOUT32YEARS, S/O KRISHNAPPA LAMINI, R/AT HANUMAN DEVARA GUDI, KALASAPURA LAMANE THANDA, MUNDARAGI TALUK, GADAG DISTRICT - 582 118. PETITIONER (BY SRI. G.C. SRIHARSHA, ADVOCATE FOR SRI. NISHIT KUMAR SHETTY, ADVOCATE) AND: STATE OF KARNATAKA BY BAJPE POLICE STATION, MANGALURU TALUK, D.K. REPRESENTED BY STATE PUBLIC PROSECUTOR, HIGH COURT BUILDINGS, BANGALORE - 560 001. RESPONDENT (BY SRI. RAHUL RAI K., HCGP) THIS CRL.RP IS FILED U/S.397 R/W401OF CR.P.C PRAYING TO SET ASIDE THE

JUDGMENT
AND

ORDER

OF CONVICTION DATED 06.10.2016 MADE IN C.C.NO.531/2012 BY THE COURT OF I ADDL. SENIOR CIVIL JUDGE AND CJM, MANGALORE D.K., AND THE

JUDGMENT
AND

ORDER

DATED 05.07.2017 MADE IN CRL.A.NO.155/2016 BY THE PRL. S.J., D.K., MANGALORE. THIS PETITION, COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING: - 2 - NC:

2024. KHC:8860 CRL.RP No.798 of 2017

ORDER

1 This Criminal Revision Petition is filed by the petitioner being aggrieved by the judgment of conviction and order of sentence dated 06.10.2016 in C.C.No.531/2012 on the file of I Additional Senior Civil Judge and C.J.M., Mangaluru, D.K., wherein the petitioner has been convicted for the offences punishable under Sections 457 and 380 of Indian Penal Code (for short IPC), against which the petitioner had filed an appeal. The Appellate Court by its judgment and order dated 05.07.2017 in Crl.A.No.155/2016 dismissed the appeal confirming the judgment of conviction and order of sentence passed by the Trial Court.

2. The ranks of the parties in the Trial Court will be considered henceforth for convenience. Brief facts of the case:

3. It is the case of the prosecution that in the intervening night of 13/14-02-2012, the accused with an intention to gain wrongfully entered into the shop of CW.1 situated near the petrol bunk, Bajpe by removing roof tiles and committed theft of

21 mobiles, one laptop and other spare - 3 - NC:

2024. KHC:8860 CRL.RP No.798 of 2017 parts of the mobiles worth of Rs.1,50,000/- including cash of Rs.53,000/-.

4. On the basis of the complaint lodged by the complainant-Mr.Abdul Hafeez on 14.02.2012, the respondent police registered the case against the petitioner in Crime No.45/2012. After conducting the investigation, submitted charge sheet for the offences punishable under Sections 457 and 380 of IPC.

5. To prove the case of the prosecution, the prosecution has The prosecution examined 7 witnesses as PWs.1 to 7 and got marked 15 documents as Exhibits P1 to P15 and none of the items got marked. The Trial Court after appreciating the oral and documentary evidence on record, recorded the conviction and the Appellate Court confirmed the same. Being aggrieved by the same, the petitioner has preferred this revision petition seeking to set aside the concurrent findings.

6. Heard Sri.G.C.Sriharsha, learned counsel appearing on behalf of Sri. Nishit Kumar Shetty, learned counsel - 4 - NC:

2024. KHC:8860 CRL.RP No.798 of 2017 appearing for the petitioner and Sri Rahul Rai.K., learned High Court Government Pleader for the respondent - State.

7. It is the submission of the learned counsel for the petitioner that the concurrent findings of the Courts below recording the conviction are perverse and illegal. Hence, the same is liable to be set aside.

8. It is further submitted that the petitioner has been falsely implicated in this case. Nothing has been recovered at the instance of the accused. The items which were recovered at the instance of the accused have not been produced before the Trial Court. In the absence of production of those documents, it cannot be said that the accused has committed a theft. However, the Courts below failed to take of this aspect and recorded the conviction and concurrently held that the accused is guilty for the offences stated supra which appears to be erroneous and not proper.

9. It is further submitted that the method in which, the voluntary statement of the accused has been recorded is contrary to the guidelines issued by the Hon'ble Supreme Court - 5 - NC:

2024. KHC:8860 CRL.RP No.798 of 2017 in the case of Subramanya Vs. State of Karnataka¹. Therefore, the said voluntary statement ought to have been set aside and the alleged recovery effected on the strength of said voluntary statement should have been rendered as ineffective. However, both the Courts have failed to take note of the said aspect and recorded the conviction which is required to be set aside. Making such submission, the learned counsel for the petitioner prays to allow the petition.

10. Per contra, learned High Court Government Pleader (for short HCGP) vehemently justified the findings recorded by the Courts below in convicting the accused. The learned HCGP submits that the voluntary statement of the accused which leads to the recovery is relevant and admissible as per Section 27 of the Indian Evidence Act, 1872.

11. It is further submitted that the voluntary statement of the accused led the Investigating Officer to recover several items which were stolen by the accused. The witnesses who were present while conducting the seizure mahazar have supported the case of the prosecution. Therefore, the Courts 1 2022 SCC OnLine SC1400- 6 - NC:

2024. KHC:8860 CRL.RP No.798 of 2017 below have considered the said recovery and recorded the conviction which contains no infirmity nor error. Hence, it may not be proper to interfere with the said findings. Making such submission, the learned HCGP prays to dismiss the petition.

12. After having heard the learned counsel for the respective parties and also perused the findings of the Trial Court, it appears that the prosecution examined seven witnesses and also marked several documents. PW.1 being a complainant has lodged a complaint against an unknown person, however, subsequently, he came to know that the accused had committed theft of the items mentioned in Ex.P1. He has supported the case of the prosecution, however, he was not an

eyewitness to the incident.

13. PW.2 is the witness to spot mahazar which is marked as Ex.P2 and recovery of mobile phones which is marked as Ex.P9. Further, he states that the accused took him along with other police officials to his house and handed over one laptop, 19 mobiles, memory cards, chargers and batteries to the police. The police have seized the said items under the mahazar which is marked as Ex.P10. Further, two mobiles - 7 - NC:

2024. KHC:8860 CRL.RP No.798 of 2017 have been seized through his friend under seizure mahazar which is marked as Ex.P11. He has supported the case of the prosecution.

14. PW.6 was working as a Civil Engineer at Mookambika Constructions stated to be the witness to the seizure mahazar of mobile phones. However, he has not supported the case of the prosecution. Except the evidence of PW.2, none of the witnesses have supported regarding seizure mahazar. No doubt, the photographs of the stolen mobiles were produced and got it marked as Exs.P3, P4 and P5, chargers and memory cards and batteries were marked as Ex.P6 and the laptop is marked as Ex.P7. Mere marking of those photos would it sufficient to prove the case of theft is a matter for consideration.

15. Before going to the other aspects, it is relevant to refer to the judgment of the Trial Court wherein the prosecution has not produced any material objects to substantiate the case of theft. No doubt, the alleged recovery is said to have taken place on the strength of the voluntary statement of the accused. Whether the said voluntary statement was recorded - 8 - NC:

2024. KHC:8860 CRL.RP No.798 of 2017 in accordance with law or not has to be considered along with the dictum of the Hon'ble Supreme Court in the case of Subramanya Vs. State of Karnataka stated supra. The Hon'ble Supreme Court in paragraphs No.83 and 84 of the said judgment observed as under:

"83. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have

been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.

84. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes etc., then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence etc. When the accused while in custody makes such statement before the two independent witnesses (panch-witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a - 9 - NC:

2024. KHC:8860 CRL.RP No.798 of 2017 particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch-witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

16. On careful reading of the dictum of the Hon'ble Supreme Court, it is clarified that before recording the voluntary statement of the accused, securing the

presence of the panch witnesses and recording the voluntary statement in the presence of the said panch witnesses are sine quo non to effect the recovery in terms of Section 27 of the Indian Evidence Act.

17. In the present case, the voluntary statement of the accused which leads to the recovery and the said portion is - 10 - NC:

2024. KHC:8860 CRL.RP No.798 of 2017 marked as Ex.P15. On perusal of the said voluntary statement, none of the independent witnesses have signed the voluntary statement as witnesses. Therefore, the said voluntary statement is contrary to the law laid down by the Hon'ble Supreme Court and such voluntary statement even though it leads to the recovery of the stolen articles would be rendered as unacceptable and acting on such voluntary statement and recorded the conviction, certainly, it requires to be set aside.

18. In the light of the observations made above, I proceed to pass the following:

ORDER

(i) The Criminal Revision Petition is allowed. (ii) The judgment of conviction and order of sentence dated 06.10.2016 passed in C.C.No.531/2012 by the I Additional Senior Civil Judge and C.J.M., Mangaluru, D.K. and the judgment and order dated 05.07.2017 passed in Crl.A. No.155/2016 by the Principal Sessions Judge, Dakshina Kannada, Mangaluru, are set aside.-. 11 - NC:

2024. KHC:8860 CRL.RP No.798 of 2017 (iii) The petitioner is acquitted for the offences punishable under Sections 457 and 380 of IPC. (iv) Bail bonds executed, if any, stands cancelled. Sd/- JUDGE JS/UN List No.:

1. SI No.:

10. CT:SNN

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