



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3560]

WEDNESDAY, THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HON'BLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE No:2114 OF 2011

Between:

1. Surapureddi Veera Babu, S/o. Satyanarayana, Someswaram
Village, Rayavaram Mandal, East Godavari District.

...PETITIONER

AND

1. The State of A.P., represented by its Public Prosecutor, High Court
of Andhra Pradesh, Hyderabad.

...RESPONDENT

Revision filed under Section 397/401 of CrPC praying that in the circumstances stated in the affidavit filed in support of the Criminal Revision Case, the High Court may be pleased to present this memorandum of CrI.R.C., being aggrieved by the judgment in C.C.No.307 of 2010, dated 27.01.2011 on the file of the Addl. Judicial First Class Magistrate, Ramachandrapuram as modified by the learned VI Addl. Sessions Judge (FTC), East Godavari Dist., at Rajahmundry in CrI.A.No.55 of 2011, dated 03.10.2011 from three years to one year or rigorous imprisonment.

IA NO: 1 OF 2011(CRLRCMP 3166 OF 2011)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the sentence in C.C.No.307 of 2010, dated 27.01.2011 on the file of the Addl. Judicial First Class Magistrate, Ramachandrapuram as modified in CrI.A.No.55 of 2011, dated 03.10.2011 passed by the learned VI Addl. Sessions Judge (FTC), East Godavari District, at Rajahmundry, by releasing the petitioner on bail.

Counsel for the Petitioner:

1.K S MURTHY ASSOCIATES

Counsel for the Respondent:

1.PUBLIC PROSECUTOR (AP)

The Court made the following:

THE HON'BLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE No:2114 OF 2011

ORDER:

1. The present Criminal Revision Case is directed against the judgment dated 03.10.2011 in CrI.A. No. 55 of 2011 on the file of the learned VI Additional Sessions Judge (FTC), East Godavari District, Rajahmundry, whereby the learned Sessions Judge dismissed the appeal preferred by the petitioner by modifying the conviction and sentence imposed on him from three (3) years of rigorous imprisonment to one year of rigorous imprisonment. The said criminal appeal arose out of the judgment dated 27.01.2011 passed by the learned Additional Judicial First Class Magistrate, Ramachandrapuram, in C.C. No. 307 of 2010, whereby the petitioner (A1), along with the other accused (A2 and A3), was convicted for the offence punishable under Section 411 of the Indian Penal Code, 1860 ("IPC" hereinafter).
2. The brief facts of the case are that, based on multiple complaints relating to the theft of motorcycles, police registered the complaints and conducted an investigation. During the course of the investigation, as many as 26 motorcycles were recovered from the possession of the petitioner (A1) and the other accused (A2 and A3). Out of the said 26 motorcycles, three motorcycles are the

subject case property of the present Calendar Case in C.C. No. 307 of 2010 on the file of the Court of the Additional Judicial First Class Magistrate, Ramachandrapuram. After completion of the trial, the learned Trial Court found the petitioner (A1) and the other accused (A2 and A3) guilty of the offence punishable under Section 411 IPC and sentenced them to undergo rigorous imprisonment for a period of three years. Aggrieved thereby, the petitioner (A1) preferred Crl.A. No. 55 of 2011 before the learned VI Additional Sessions Judge (FTC), East Godavari District, Rajahmundry. The learned Appellate Court, while modifying the conviction and sentence from three years to one year of rigorous imprisonment, dismissed the appeal. Hence, the present Criminal Revision Case has been filed.

3. The learned counsel for the petitioner raised two pertinent legal questions before this Court to challenge the order of conviction and sentence passed by the learned Trial Court.
4. Firstly, it is the contention of the learned counsel for the petitioner that the entire prosecution case is based on the confession of the petitioner (A1). It has been stated in the prosecution case that on the basis of confessional statement of A1, the motorcycles were recovered and the other co-accused were arrested. The learned counsel further submits that at the time of recording confession, A1 was not arrested, thus, he could not be treated as a person in

custody and as such, his confessional statement has no evidentiary value according to the provision of Section 27 of the Indian Evidence Act, 1872 [**“the Evidence Act”** hereinafter]. In support of the contention, the learned counsel places reliance on the judgment of the Hon’ble Supreme Court in **Rajesh & Anr. v. The State of Madhya Pradesh**¹ (Criminal Appeal Nos.793-794 of 2022).

5. Secondly, the learned counsel for the petitioner submits that, at the time of examination of the accused under Section 313 of the Code of Criminal Procedure, 1973 [**“CrPC”** hereinafter], it was alleged that the accused persons did not provide proper explanation for his custody of the stolen motorcycles. It is argued that the accused persons shall have the liberty to maintain silence during the course of examination under Section 313 of CrPC and such silence cannot be treated as an unaccounted for their possession of stolen articles. In support of the contention, the learned counsel places reliance on the judgment of the Hon’ble Supreme Court in the case **Manoj Kumar Soni v. State of Madhya Pradesh**².
6. Per contra, the learned Assistant Public Prosecutor submits that all the accused persons were involved in a racket for theft of a huge number of two wheelers. The prosecution has examined all relevant witnesses, including independent mediators/ charge sheet

¹2023 INSC 839

²(2024) 17 SCC 401

witnesses, who specifically deposed the nature of the investigation conducted by the police and the seizure affected at the time of recovery of the stolen motorcycles. The police also seized three motorcycles in the present calendar case, which were marked as material objects before the Trial Court. The accused persons do not have any account of possession of the stolen motorcycles. Thus, the prosecution has sufficiently proved the charge against the present petitioner. He further submits that the learned Trial Court as well as the learned Appellate Court have categorically observed their findings on the basis of the evidence on record. There is no perversity, either factually or legally, in the findings of the learned Trial Court and the learned Appellate Court. Thus, there is no merit to entertain the present Criminal Revision Case.

7. Heard the submissions of the learned counsel for the petitioner and the learned Assistant Public Prosecutor appearing for the respondent-State at length. Perused the judgment dated 27.01.2011 in C.C. No. 307 of 2010 passed by the learned Additional Judicial First Class Magistrate, Ramachandrapuram, whereby the present petitioner (A1) and the other accused (A2 and A3) were convicted for the offence punishable under Section 411 IPC and the judgment dated 03.10.2011 in CrI.A.No.55 of 2011 passed by the learned VI Additional Sessions Judge (FTC), East Godavari District, Rajahmundry.

8. It has been pointed out by the learned counsel for the petitioner that at the time of recording the confessional statement of the petitioner (A1), he was not arrested by the police. Thus, his statement cannot be treated as a statement leading to discovery under Section 27 of the Evidence Act.
9. Before going to the merit of the legal submissions by the learned counsel for the petitioner, it is necessary to briefly refer to the prosecution case.
10. The case of the prosecution, in brief, as follows:

On the basis of three separate complaints dated 05.10.2009 and 02.07.2010 lodged by P.Ws.1 to 3, the Ramachandrapuram Police registered cases in Crime Nos. 211 of 2009, 97 of 2010, and 98 of 2010 and started investigation. During the course of the investigation, on 06.07.2010 at 6:30 PM, the Sub-Inspector of Police, Mandapeta Town P.S., arrested A1 in Cr. No.101 of 2010 registered for the offence punishable under Section 379 IPC in the presence of mediators, near Padakaluva Bridge Centre, Mandapeta. Thereafter, A1 confessed regarding the commission of thefts relating to the motorcycles involved in Crime Nos.211 of 2009, 97 of 2010 and 98 of 2010 of Ramachandrapuram P.S., and stated that he had given two motorcycles concerned in Crime Nos.211 of 2009 and 97 of 2010 to A2 for Rs.5,000/- each and one motorcycle concerned in Crime No.98 of 2010 to A3 for Rs.6,000/-. The said confessional statement was drafted by the mediators. On the basis of the confession of A1, Sub-Inspector of Police, Mandapeta Town P.S. arrested A2 on 06/07.07.2010 at 12-30 M.N. in the presence of mediators and A2 had confessed about the offence and seized the stolen motorcycles concerned in

Crime Nos.211 of 2009 and 97 of 2010 of Ramachandrapuram P.S. from A2 under the cover of mediators report drafted by said mediators. On the basis of the confession of A1, the Sub-Inspector of Police, Mandapeta Town P.S. also arrested A3 on 07.07.2010 at 2.30 AM in the presence of mediators and A3 had confessed about the offence and seized the stolen motorcycle concerned in Crime No.98 of 2010 of Ramachandrapuram P.S. from A.3 under the cover of mediators report drafted by said mediators and sent A.1 to A.3 for judicial remand.

11. P.W.4 is an independent charge sheet witness who was present at the time of the alleged seizure. In the evidence, he deposed that on 06.07.2010 at about 6.00 PM, while he was present in his office, the Sub-Inspector of Police, Mandapeta Town Police Station, called him. He was informed that they have information of the alleged theft of motorcycles and that he had to act as a mediator. Thereafter, the Sub-Inspector of Police, P.W.4, another police constable and another mediator proceeded towards PedhaKaluva Bridge, Mandapeta. At that time, the Petitioner (A1) was coming from Mandapeta on a motorcycle. On seeing the police, he turned back and attempted to flee. The police chased him for about 10 feet and apprehended him. On questioning, the petitioner (A1) revealed his name and admitted that the motorcycle was the stolen property. Upon further questioning, he confessed about commission of theft of 26 motorcycles in different locations of Mandapeta town and stated that he could show the locations where

the motorcycles were kept and the names of the other co-accused. Thereafter, on the basis of the information furnished by the petitioner (A1), the co-accused (A2 & A3) were arrested and 26 motorcycles were seized from different places and A1 was also arrested.

12. It is the contention of the petitioner that the entire prosecution case is on the basis of the confessional statement of the Petitioner (A1) when he was not actually arrested. He further submits that the arrest was effected only after the seizure of the motorcycles. Thus, the statement of A1 cannot be said to be relevant under Section 27 of the Evidence Act.
13. To understand the true purport and meaning of Section 27 of the Indian Evidence Act, Sections 26 and 27 of the Evidence Act are set out hereunder:

Section 26: Confession by accused while in custody of police not to be proved against him:

No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Section 27: How much of information received from accused may be proved:

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a

confession or not, as relates distinctly to the fact thereby discovered, may be proved.

14. On a plain perusal of the abovementioned provisions of the Evidence Act, it appears that the section 27 constitutes an exception to the general rule under Section 26 of the Evidence Act. In terms of Section 27, only that much of the statement made by a person in custody or accused of an offence relates to the discovery of the case property is relevant and admissible in evidence.

15. In the case of **Rajesh & Anr., v. The State of Madhya Pradesh** (Supra1), the Hon'ble Supreme Court has clarified that,

“22. Section 26 of the Indian Evidence Act, 1872 (for brevity, 'the Evidence Act'), provides that no confession made by any person whilst he is in the custody of a police officer shall be proved against such person, unless it is made in the immediate presence of a Magistrate. Section 27, thereafter, is in the nature of an exception to Section 26 of the Evidence Act. It states that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Therefore, it is essential under Section 27 of the Evidence Act that the person concerned must be 'accused of an offence' and being in the 'custody of a police officer', he or she must give information leading to the discovery of a fact and so much of that information, whether it amounts to a confession or not, that relates distinctly to the fact discovered, may be proved against him. In effect, both aspects, viz, being in 'the custody of a police officer' and being 'accused of an offence', are indispensable pre-requisites to render a confession made to the police admissible to a limited extent, by bringing into play the exception postulated under Section 27 of the Evidence Act.”

16. To understand the principle enshrined under Section 26 of the Evidence Act, it is necessary to ascertain whether the petitioner (A1) was actually arrested in connection with this case prior to make any statement. Section 46 of CrPC (Section 43 of BNSS) prescribes the manner in which an arrest is to be effected. For a clearer understanding of the scope of Section 46 of CrPC, it is better to set out the Section hereunder:

Section 46 CrPC: Arrest how made (corresponding to Section 43 of the BNSS)

43. Arrest how made(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action:

Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) The police officer may, keeping in view the nature and gravity of the offence, use handcuff while making the arrest of a person or while producing such person before the court who is a habitual or repeat offender, or who escaped from custody, or who has committed offence of organised crime, terrorist act, drug related crime, or illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency-notes, human trafficking, sexual offence against children, or offence against the State.

(4) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

(5) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

17. From the above provision, it is crystal clear that an arrest is a formal mode of taking a person into police custody. It involves the restraint of the personal liberty of the individual. An arrest is not complete unless there is a submission to the custody by word or action or actual contact with the person being arrested. An essential element to constitute a valid arrest is an intention to arrest under lawful authority, accompanied by the seizure or detention of the person in a manner known to law, which is so understood by the person arrested. An arrest can be made either by actual contact or by spoken words.

18. In the present case, when the petitioner (A1), after seeing the police personnel, attempted to flee, the police chased him about 10 feet and apprehended him. The fact itself is sufficient to show that the police personnel/ investigating agency actually effected arrest of A1 when he tried to flee. Furthermore, in the attending facts and circumstances, it appears that the conviction was recorded on the basis of the evidence of PW 4, who is an independent witness, but

not on the basis of a confessional statement made by the Petitioner (A1). No statement of A1 was marked by the Trial Court in this case. Moreover, the confessional statement of the petitioner (A1) recorded by the police during the course of investigation under Section 161 CrPC was not marked as an exhibit during the trial. The learned Trial Court has recorded the conviction only on the basis of the evidence of the prosecution witnesses. There are clear accusations against the present petitioner and the prosecution has clearly bring home the charges under Section 411 IPC regarding possession of stolen motorcycles by the petitioner. There is no doubt that during the course of investigation, the police personnel/ investigating agency have recovered the three motorcycles pertaining to the case property, including the other 26 motorcycles pertaining to other case properties of other calendar cases.

19. In view of the above, in my view, whether A1 has made statement before the police and on the basis of which stolen motorcycles were recovered is not a relevant question or deciding factor in recording conviction by the learned Trial Court. The learned Trial Court has only recorded conviction against the petitioner (A1) on the basis of direct evidence on record. In my view there is no perversity in the judgment and order passed by the learned Trial Court. Thus, the first legal question is decided as against the petitioner. The law laid down by the Hon'ble Apex Court in the

case of **Rajesh & Anr., v. The State of Madhya Pradesh (Supra1)** is factually distinguishable.

20. The second legal question appeared from the submission of the learned counsel for the petitioner is that, the accused persons shall have the liberty to maintain silence during the course of his examination under Section 313 of CrPC and such silence cannot be treated as an unaccounted for their possession of stolen articles. In support of this contention, he places reliance on the judgment of the Hon'ble Supreme Court in the case **Manoj Kumar Soni v. State of Madhya Pradesh (supra2)**, wherein the Hon'ble Supreme Court, while dealing with the statement recorded under Section 313 CrPC against a particular accused who was convicted under Section 411 IPC, has observed that questions framed by the learned Trial Court against a particular accused are not about the incriminating circumstances appearing from the prosecution witnesses. However, the Hon'ble Supreme Court has observed that the questions framed against the particular accused is not an empty formality. None of the material circumstances forming the basis of his conviction were put to the accused. It has also been noted that, astonishingly, not even a single question regarding the stolen articles was posed to him. On the basis of which the Hon'ble Supreme Court has held that where questions regarding

material circumstances of the alleged offence are not put to the accused, he may enjoy the silence.

21. In this particular case, the statement recorded under Section 313 CrPC has been perused, wherefrom it appears that the learned Trial Court has framed particular questions regarding involvement of the petitioner (A1) and other accused in the stealing of the motorcycles and also put a specific question regarding their possession of stolen articles. On such questions, the petitioner (A1) and the other accused were mum. When there is a duty to speak, accused cannot enjoy his silence. Thereby, there is no account or statement by the petitioner (A1) and other accused regarding their possession of such motorcycles. Hence, in my view, the law laid down by the Hon'ble Supreme Court in **Manoj Kumar Soni v. State of Madhya Pradesh (supra2)** is not applicable to the present facts of the case.
22. According to the illustration (a) of Section 114 of the Evidence Act, the Court may presume that a person found in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he offers a reasonable explanation or account for his possession.
23. In the present case, no explanation was offered by the petitioner regarding possession of the stolen motorcycles. Thus, in my view,

the second legal question raised by the learned counsel for the petitioner is also answered in negative.

24. Considering the entire facts and circumstances of the case discussed hereinabove, I am of the view that recording conviction and sentence against the petitioner (A1) by the learned Trial Court and modified by the learned Appellate Court suffer from no illegality, either factually or legally. Thus, the Criminal Revision Case has got no merit and is accordingly dismissed.
25. The order suspending the sentence during the pendency of the Criminal Revision Case stands vacated. The petitioner is directed to appear before the learned Trial Court within four weeks from the date of passing of this order to serve the remaining portion of the sentence. Failing which, the Trial Court shall take necessary steps to secure his presence and ensure compliance.
26. Miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE SUBHENDU SAMANTA

Dt.25.02.2026

BV