IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR JUSTICE S RACHAIAH

CRIMINAL REVISION PETITION NO. 26 OF 2017

C/W

CRIMINAL REVISION PETITION NO. 360 OF 2017

IN CRL.RP No. 26/2017

BETWEEN:

MOHAMMED ABDUL @ CHOTA BABA
S/O ISAQ SAIT,
AGED ABOUT 38 YEARS,
SCRAP MERCHANT
R/O. 2ND CROSS, RML NAGARA,
SHIMOGA-577201.

…PETITIONER

(BY SRI B. S., PRASAD, ADVOCATE)

Digitally signed by RENUKA
Location: HIGH COURT OF KARNATAKA

AND:

STATE BY PSI,
HONNALI POLICE,
SHIMOGA DISTRICT-577217.

…RESPONDENT

(BY SRI K. NAGESHWARAPPA, HCGP)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 09.02.2012 PASSED BY THE JUDICIAL MAGISTRATE FIRST CLASS, HONNALI IN C.C.NO.623/2010 AND ALSO SET ASIDE THE JUDGMENT AND ORDER DATED 22.11.2016 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, AT DAVANAGERE IN CRL.A.NO.21/2012.

IN CRL.RP NO. 360/2017

BETWEEN:

FAYAZ AHMED
AGED ABOUT 38 YEARS,
AUTO DRIVER
R/AT N.T.ROAD,
NEW MANDI,
SHIMOGA-577201

...PETITIONER

(BY SRI K. V. SATEESHCHANDRA., ADVOCATE)

AND:

STATE BY PSI,
HONNALI POLICE,
DAVANAGERE DISTRICT-577217,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE-560001.

...RESPONDENT

(BY SRI K. NAGESHWARAPPA, HCGP)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 09.02.2012 PASSED BY THE JUDICIAL MAGISTRATE FIRST CLASS, HONNALI IN C.C.NO.623/2010 AND ALSO SET ASIDE THE JUDGMENT AND ORDER DATED 22.11.2016 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, DAVANAGERE IN CRL.A.NO.21/2012.

THESE CRIMINAL REVISION PETITIONS HAVING BEEN HEARD AND RESERVED ON 18.02.2025 COMING ON FOR PRONOUNCEMENT OF ORDER, THROUGH VIDEO CONFERENCING, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE S RACHAIAH

CAV ORDER

1. Criminal Revision Petition Nos.360/2017 and 26/2017 have been filed by the petitioners, who are arraigned as accused Nos.1 and 2, being aggrieved by the judgment of conviction and order on sentence dated 09.02.2012 in C.C.No.623/2010 passed by the Judicial Magistrate First Class, Honnali and its confirmation judgment and order dated 22.11.2016 in Crl.A.No.21/2012 on the file of II Additional District and Sessions Judge, Davanagere, seeking to set aside the concurrent findings recorded by the Courts below. Therefore, both the revisions petitions have been taken up together for consideration and disposal.

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 the petitioners who are arraigned as accused Nos.1 and 2 in the case, stated to have purchased one Tata Sumo vehicle bearing

registration No.KA.05.N.9602, which had met in an accident and it was not in a running condition. After purchasing the said vehicle, they had sold the spare parts to the gujari and thereafter, they had stricken the engine number, chassis number and also number plate of the said vehicle. It is further stated that the petitioners along with other accused, again stated to have committed theft of the Tata Sumo vehicle of CW.4 at Devanayakanahalli, bearing its No.KA.01.1665 on 11.06.2009. They removed the engine number and chassis number of the stolen Tata Sumo vehicle and fabricated the numbers of the engine and chassis and also changed the number plate and tried to avail the finance from the financial institution by producing the fake engine number, chassis number and number plate. Therefore, a case came to be registered against the petitioners and other accused persons before the respondent – Police. The respondent – police after conducting the investigation, submitted the charge sheet.

4. To prove the case of the prosecution, the prosecution examined 15 witnesses as PWs.1 to 15 and got marked

25 documents as Exs.P1 to P25. After concluding the trial and after hearing the arguments of learned counsel for the respective parties, the Trial Court rendered the conviction against accused Nos.1 to 3 for the offences punishable under Sections 379, 420 and 468 of Indian Penal Code (for short 'IPC'). Being aggrieved by the said conviction, the petitioners and accused No.3 approached the Appellate Court by way of filing an appeal. The Appellate Court after considering the findings of the Trial Court, dismissed the appeal. Hence, the petitioners have approached this Court by way of filing these revision petitions.

5. Heard Sri K.V. Sateesh Chandra, learned counsel for the petitioner in Criminal Revision Petition No.360/2017 and Sri.B.S. Prasad, learned counsel for the petitioner in Criminal Revision Petition No.26/2017 and Sri. K. Nageshwarappa, learned High Court Government Pleader for the respondent – State in both the revision petitions.

6. It is the submission of the learned counsel for the petitioners in both the petitions that the concurrent findings of the Courts below are contrary and opposed to the law, evidence on record and probabilities of the case.

7. It is further submitted that both the Courts below have committed serious error in convicting the petitioners when the prosecution has failed to prove the guilt of the petitioners. The evidence of interested witnesses namely PWs.11 to 15, who are the official witnesses, ought not to have been considered by the Courts below since they are the interested witnesses. The evidence of PW.9 would indicate that the Tata Sumo of which the Insurance Company had sold to the petitioners was totally a damaged vehicle and it was not supposed to be sold to the persons. The prosecution relying on Form Nos.29 and 30, which are marked as Exs.P23, P24 and P25, which appears to be concocted and the prosecution has not proved that the petitioners had purchased the damaged vehicle and stricken the engine and chassis numbers.

There is no proof that the petitioners have fabricated the engine and chassis numbers to the alleged stolen vehicle.

8. It is further submitted that even the evidence of PW.15 would indicate that he had not identified the accurate and correct engine number as well as chassis number of the alleged stolen vehicle. Such being the fact, the Courts below have concurrently held that the petitioners have committed an offence which is untenable and unsustainable. Therefore, interference with the said findings is very much required and necessary. Making such submissions, the learned counsel for the petitioners pray to allow the revision petitions.

9. *Per contra*, the learned High Court Government Pleader for the respondent - State vehemently justified the concurrent findings and he further submitted that the evidence of PW.6 would indicate that the Tata Sumo vehicle bearing its registration No.KA.01.1665 was parking in front of the house of PW.1, which was being driven by PW.3 – Maheshwarappa and thereafter, during

night, it was stolen. The same has been corroborated by the evidence of PW.7, who is the joint owner of the said vehicle. PW.9 – Veerendra who was the owner of Tata Sumo vehicle bearing No.KA.05.N.9602 has stated in his evidence that in the year 2007, his vehicle met with an accident and got damaged. Thereafter, he stated to have obtained compensation from the Insurance Company and surrendered the same. He stated to have learnt that the said vehicle was being driven by the third party. He further stated that he surrendered the documents to the RTO Office. All the witnesses have spoken about the theft of vehicle and also return the earlier vehicle to the Insurance Company and also surrendering the documents to the RTO Office. Based on the evidence of these witnesses, the Trial Court opined that the petitioners have committed the offences as stated *supra.*

10. It is further submitted that these petitioners have not explained as to how they had possessed the vehicle bearing its No.KA.01.1665. Non-explanation of relevant facts by the petitioners would indicate that they have

committed theft of the said Tata Sumo vehicle. Therefore, both the Courts have drawn adverse inference and opined that the accused have committed the offences. Hence, there is no reason to interfere with the said findings. Therefore, the petitions are deserve to be dismissed. Making such submissions, the learned High Court Government Pleader prays to dismiss the revision petitions.

11. Having heard the learned counsel for the respective parties and also perused the findings of the Courts below in recording the conviction, it is necessary to have a cursory look upon the evidence of all the witnesses and also the documents relied on in the case.

12. PW.1 was stated to be the owner of the Tata Sumo vehicle bearing its registration No.KA.01.1665. He stated in his evidence that on 11.06.2009, his Tata Sumo vehicle was stolen when it was parking in front of his house. On 05.08.2009, he had received a message from the police that his vehicle was traced and he went to the police

station and he was told that the petitioners have committed theft of his vehicle.

13. PW.2 was stated to be the witness to Ex.P3. He has not supported the case.

14. PW.3 was stated to be the driver of the vehicle bearing No.KA.01.1665. He has stated in his evidence that he learnt that the said Tata Sumo was stolen by somebody.

15. PW.4 was stated to be the witness to the seizure panchanama under which the vehicle bearing No.KA.01.1665 said to have been seized in his presence and he has affixed his signature on the said mahazar, which is marked as Ex.P4. He has supported the case.

16. PW.5 also a witness to Ex.P4. He has not supported the case of the prosecution regarding seizure of the Tata Sumo vehicle.

17. PW.6 was the mother-in-law of PW.3. She stated in her evidence that PW.3 being her son-in-law was working as a driver of the Tata Sumo of which PW.1 was the owner.

18. PW.7 was also the joint owner of the vehicle bearing its registration No.KA.01.1665. She also stated that her vehicle was stolen when it was parked in front of her house.

19. PW.9 was the owner of the vehicle bearing its registration No.KA.05.N.9602. He stated in his evidence that his vehicle was met with an accident and got damaged. Therefore, he handed over the said vehicle to the Insurance Company and submitted the papers to the RTO Office.

20. PW.10 stated to have purchased the vehicle bearing No.KA.05.N.9602 in the auction for a sum of Rs.35,000/-. After he purchased the said vehicle, he stated to have sold the said vehicle to accused No.2 for a sum of Rs.38,000/-. However, in the cross-examination, he

stated that he has not maintained any documents to show that he sold the said vehicle to accused No.2.

21. PWs.11, 12, 13 and 14 are the police officials. They have stated in their evidence as per the statements given under Section 161 of the Code of Criminal Procedure.

22. PW.15 was working as Assistant Director of FSL, has stated in his evidence that, after having received the requisition from the respondent/police, he went to Honnali police station along with his staff and examined the said vehicle and submitted his report as per Ex.P12. According to him, the Tata Sumo vehicle which he inspected was bearing its No.KA.01.B.1665. The chassis number and engine number have been tampered. He further stated that he could not say the actual numbers found on the engine of the said vehicle.

23. Be that as it may, on reading of the evidence of all these witnesses, the evidence of PW.11 who was working as a Police Constable at Honnali police station is relevant to be

considered. According to him, he had been to Shivamogga and saw that one Tata Sumo was parking on the road side in front of McGann Hospital. He stated to have asked the inmates of the said car as to whether it was a stolen car or not. They stated that it was a stolen car. Such evidence of the said witness cannot be believed. Moreover, even though he stated to have seized the said car at Shivamogga and apprehended the accused in Shivamogga, the fact remains that PWs.4 and 5, who are the witnesses to Ex.P4 under which the car stated to have been seized under the said mahazar, have deposed that they had affixed the signature in the police station at Honnali. Such being the fact, PW.11 arrested the accused at Shivamogga and seized the car at Shivamogga appears to be unbelievable. However, both the Courts have arrived at a conclusion that the prosecution has proved that the petitioners have stolen the said car which appears to be unrealistic and opposed to the evidence on record.

24. When the prosecution has failed to prove that the petitioners have stolen the said car, the remaining portions regarding tampering the chassis number, engine number and also changed the number plates of the car cannot be sustained. Moreover, PW.9 who stated to be the owner of the car bearing its No.KA-05-N-9602 has stated in his evidence that he had sold the said car to accused No.2. However, he did not produce any documents to show that he had sold the said car to accused No.2.

25. On overall reading of the evidence and facts and circumstances of the case, it appears that the prosecution has failed to establish the fact that the petitioners have stolen the car and tampered the chassis and engine number etc., Therefore, the findings of the Courts below in rendering the conviction based on the evidence which appears to be erroneous and the findings of the Courts below cannot be sustained.

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

ORDER

(i) Both the Criminal Revision Petitions are *allowed.*

(ii) The judgment of conviction and order of sentence dated 09.02.2012 passed in C.C.No.623/2010 by the Judicial Magistrate First Class, Honnali and its confirmation judgment and order dated 22.11.2016 in Crl.A.No.21/2012 passed by the II Additional District and Sessions Judge, Davanagere, are set aside.

(iii) The petitioners are acquitted for the offences punishable under Sections 379, 420 and 468 of IPC.

(iv) Bail bonds executed, if any, stand cancelled.

Sd/-
(S RACHAIAH)
JUDGE

BSS List No.: 19 Sl No.: 2