A RAJESH KUMAR C. K. JAIN

v.

THE STATE OF KARNATAKA

(Criminal Appeal No. 1833 of 2017)

B OCTOBER 09, 2017

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Penal Code, 1860 – s.379 – Theft – Settlement arrived at between the parties, with regard to a dispute, which was reduced in C *writing on a bond paper and filed in the Court – Appellant-accused alleged to have stolen the said bond-paper from the file – Appellant convicted by trial court – Appeal by appellant before the Sessions Judge, allowed – Revision petition filed by the State before High Court was allowed holding that Appellate Court did not look into the materials available on record – On appeal, held: In the present* D *case, the Sessions Judge (Appellate Court) on the basis of evidence on record held that the existence of bond in question was not sufficiently proved – Further, it gave sufficient reasoning for acquitting the accused – High Court erred in setting aside the said acquittal order on insufficient grounds – Order of High Court is set* E *aside and that of Appellate Court acquitting the appellant is restored.*

Evidence Act, 1872 – ss. 25, 26 – Applicability of – Investigating Officer (IO) relying on Exh.P6, which was the statement made by appellant-accused, tried to prove that appellant voluntarily made the said statement about incidence of crime – Held: Exh. P6 F *was hit by ss.25 and 26 and was inadmissible in evidence since no recovery was made u/s.27.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1833 of 2017

From the Judgment and Order dated 09.11.2016 of the High Court G of Karnataka Kalaburagi Bench in Criminal Petition No. 200053 of 2016.

Sharanagouda Patil, Ms. Supreeta Patil, S-legal Associates, Advs. for the Appellant.

Joseph Aristotle S., Ms. Priya Aristotle, Ashish Yadav, Advs. for the Respondent.

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The Order of the Court was delivered by A

ASHOK BHUSHAN, J. 1. Leave granted.

2. This appeal has been filed against the judgment dated 09.11.2016 of High Court of Karnataka by which the Criminal Revision Petition filed by the State of Karnataka against order of acquittal recorded by the Session Judge has been set aside and the case remanded to the Appellate Court. B

3. Brief facts of the case as emerged from the record are:-

There was a dispute regarding entries in Pahani with reference to Sy. Nos. 188, 189 and 190, which was pending before the Assistant Commissioner, Yadgiri. In the proceedings before the Assistant Commissioner, Yadgiri, it is alleged that a settlement has arrived between the parties, which was reduced in writing on a bond paper of value of Rs.100/- and filed in the Court. The allegation against the accused appellant is that on 16.07.2010 at 12.00 Noon, he took away the bond from the file without permission. At 4.00 PM on the same day, accused again came to the Office of Assistant Commissioner and when enquired, he apologized and assured to return the bond on the next day. However, on the next day, accused did not come to the Office of Assistant Commissioner. Hence on 18.07.2010 at about 7.00 PM, PW2 lodged a first information report, on the basis of which CC No. 402 of 2010 was initiated. The prosecution produced PW1 to PW7 and document Exhs. 1 to 6. Statement of accused was recorded under Section 313 Cr.P.C. The trial court convicted the accused under Section 379 of I.P.C. for one year simple imprisonment and nine months simple imprisonment for offence punishable under Section 201 of I.P.C. C D E F

Appeal was filed before the Session Judge, Yadgiri. Session Judge vide its judgment and order dated 24.03.2016 allowed the appeal and set aside the conviction acquitting the accused against which revision was filed by the State, which revision has been allowed and judgment of acquittal has been set aside remanding the case to the Appellate Court for reconsideration. Aggrieved by the said judgment, the appellant has come up in this appeal. G

4. The Magistrate relying on prosecution witnesses PW2 to PW6 found accused guilty of stealing the bond paper, on which settlement H

among three parties was recorded. The accused has denied recording of settlement among the parties. The I.O. in his statement has stated that accused has voluntarily made the statement before him that he took away the bond, tore it and thrown it in the river. The Magistrate had relied on the aforesaid evidence given by the I.O. and had observed that evidence of I.O. has proved the offence committed by the accused.

5. The Appellate Court has recorded acquittal after consideration of the entire oral and documentary evidence on the record. The Appellate Court has come to the conclusion that on the basis of the evidence on record, the signing of the bond is not sufficiently proved, hence the question of snatching away by the accused does not arise. The Appellate Court has drawn adverse inference for not recording the statement of other two persons, alleged to have signed the bond paper. The I.O. neither recorded the statement of other two parties to the settlement nor they were produced in evidence before the Court. Hence sufficient doubt was created regarding existence of such bond, which was correctly relied by the Appellate Court.

6. The Appellate Court has also rightly observed that the trial court has considered only the examination-in-chief of witnesses without adverting to the cross-examination. The Appellate Court has also drawn adverse inference on the reason that I.O. did not request the trial court to summon the original file of Assistant Commissioner to prove the fact of signing the order sheet by the accused and other persons. Non-examination of the parties concerned raise serious doubt as to the existence of the settlement. EXh.P6 was hit by provisions of Sections 25 and 26 of the Indian Evidence Act, by which I.O. tried to prove that accused himself voluntarily made a statement of incidence of crime. The statement was inadmissible in evidence since no recovery under Section 27 of the Indian Evidence Act was claimed.

7. The High Court in exercise of its revisional jurisdiction has recorded following reasons for setting aside the Appellate Court's order:-

(i) Session Court committed grave error by adopting different line of direction by not appreciating the material available on record.

(ii) The findings of Session Judge in holding that filing of such document before Assistant Commissioner is not established is contrary to the material available on record.

In Para 6 of the Judgment, the High Court has made following observations:-

> "After careful consideration of judgment impugned and as well as judgment rendered in C.C. No.l 402/2010, it is clearly seen that learned Sessions Court has taken the matter on a totally different direction without looking into order sheet dated 12.07.2010 maintained by Assistant Commissioner in the proceeding, which was pending before him wherein, it is clearly seen that there is recording by Assistant Commissioner to the effect that there was a move for settlement between Chandrashekar, Rajshekar C.K. Jain and Suresh Kumar C.K. Jain and further noting that they have affixed their signature on the order sheet to the said effect. If that is accepted, then filing of agreement for settlement cannot be disputed. So also, theft of said document by respondent herein as alleged in the complaint filed against him which is recovered from the police against him in C.C. No.402/2010."

8. We have looked into the judgment of the trial court and Appellate Court and the materials on record.

9. The observation of the High Court that Appellate Court had not looked into the materials available on record is not factually correct. The Appellate Court has thoroughly considered each and every material available on record. In Para 14 of the judgment, issues which have arisen before the Appellate Court has been noticed and Issue Nos. 1 to 3 were taken together. The Appellate Court has considered documentary evidence as well as the oral evidence, which was lead in the case. Exh.P3, on which much reliance was placed by prosecution did not prove the guilt. The Appellate Court has observed that I.O. should have enquired with the opponent of the accused who were said to be present on the date of production of the said alleged agreement bond and said to have signed the same before the Assistant Commissioner. Following observations have been made by the Appellate Court:-

> ".....The I.O. should have enquired with the opponent of the accused who said to were present on the date of production of the said alleged agreement bond before the said Assistant Commissioner. But the I.O. has not recorded it. Therefore, this fact leads to draw an adverse inference against the case of the

A prosecution. Therefore, the impugned judgment of conviction and order of sentence is deserves to be set aside."

10. The evidence of PW2 to PW6 on which much reliance was placed by prosecution has also been considered in detail by the Appellate Court. Other circumstances of the case that it is not believable that B accused after snatching the bond will again come back at 4.00 PM and not taking any action when accused had come back at 4.00 PM, adverse inference was rightly drawn against the prosecution. The delay caused in filing the complaint, which is more than two days after the incident has also been relied by the Appellate Court. The Appellate Court did not commit any error in not relying on Exh.P6 which was alleged to be C voluntary statement made by the accused, not being admissible in evidence.

11. We are of the view that the Appellate Court has given sufficient reasoning for acquittal of the accused and the High Court has erred in setting aside the acquittal order on insufficient grounds. The observation D of the High Court that Sessions Judge has not properly appreciated the materials available on record is not factually correct. We are satisfied that sufficient grounds have been made out for setting aside the order of the High Court and restoring the order of acquittal recorded by the Appellate Court.

E 12. In result, the appeal is allowed.

Divya Pandey Appeal allowed.