

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Revision Case No.180 OF 2020

Between:

Katkuri Ravinder

... Petitioner/A2

And

The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana.

... Respondent

DATE OF JUDGMENT PRONOUNCED:

25.01.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.R.C.No.180 of 2020

% Dated 25.01.2024

Katkuri Ravinder

... Petitioner/A2

And

\$ The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana.

... Respondent

! Counsel for the Petitioner: Sri C.Sharan Reddy

^ Counsel for the Respondents: Sri S.Sudershan
Additional Public Prosecutor for
respondent

>HEAD NOTE:

? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL REVISION CASE No.180 OF 2020****O R D E R:**

1. This Criminal Revision Case is filed by Accused No.2 challenging the Judgment dated 10.02.2020 passed by the III Additional District and Sessions Judge at Asifabad in CrI.A.No.37 of 2019, whereby the learned Sessions Judge partly allowed the appeal reducing the period of sentence imposed by the Judicial Magistrate of First Class, Bellampalli in CC.No.907 of 2014, dt.15.02.2019, against A2 from two years to one year and the period of simple imprisonment in default of payment of fine from six months to three months,

2. Heard learned counsel for the revision petitioner and learned Additional Public Prosecutor for the 1st respondent-State.

3. The petitioner is accused No.2. He was prosecuted along with Accused No.1 for entering into conspiracy with A1, who forged signature of MPDO and transferred an amount of Rs.47,372 and Rs.3,26,000/-. The said amounts were deposited into the account of A1. Complaint was given by PW1 who worked as Additional Programme Officer in the office of NREGS. Specifically, the case of the prosecution against this petitioner is

that he was working in the position of a Computer Operator in the MPDO's office at Bellampally. The cheques were subjected to theft and mis-used as stated above.

4. During the course of investigation, the Investigating Officer-PW14 collected note books with the hand writings of A1 and A2. Ex.P18 is the note book of revision petitioner/A2, which was seized under Seizure Panchanama-Ex.P16, pursuant to the confession of A2 and marked as Ex.P11.

5. According to prosecution Ex.P17 is the note book collected from A1 and Ex.P18 is note book of A2. They were sent to the FSL for the purpose of comparison and opinion regarding the signatures and hand writings appearing on the two cheques which were mis-used.

6. Having received Ex.P19 FSL report giving opinion about signatures on cheques, PW14 who is the Investigating officer filed charge sheet.

7. Learned Magistrate having examined witnesses PW1 to PW14 and marking relevant documents Exs.P1 to P20 found the revision petitioner/A2 also guilty along with Accused No.1, for

committing acts punishable under Section 120-B read with Section 468, 471, 420 of the Indian Penal Code.

8. Aggrieved by the conviction recorded by the learned Magistrate, petitioner approached the Sessions Court. The learned Sessions Judge by Judgment dated 10.02.2020 concurred with the findings of the learned Magistrate and dismissed the appeal. However, the sentence of imprisonment imposed against A2 was reduced to one year.

9. Learned Counsel appearing for the petitioner would submit that there is no evidence that the petitioner was in possession of the cheques or that he had in any manner conspired with A1 for committing theft of the cheques. Further, the amounts were deposited into the account of A1 and there is no evidence to show that the petitioner/A2 was in any manner benefited from the alleged acts of A1.

10. On the other hand learned Additional Public Prosecutor would submit that the concurrent findings of both the Courts below are logical and warrants no interference.

11. According to the evidence of PW1, it was A2 who had filled up the cheques. Having gone through the evidence, PW1 who is

the complainant has stated that this petitioner and A1 were responsible for committing theft of two cheques and misappropriating the amount. But he did not state in the chief-examination about petitioner's involvement. However, in the cross-examination he stated that he suspected that this petitioner/A2 was responsible for misappropriation, as such, the name of this petitioner was written in the complaint. He specifically stated that he does not know who filled up the disputed cheques. Further, it is not his case that he is acquainted with writings and signature of Accused No.1 or this petitioner.

12. Except the evidence of PW1 that he had suspicion against this petitioner for entering into conspiracy with Accused No.1, there is no evidence to substantiate that this petitioner was involved in any manner, except the FSL report -Ex.P19 which was marked by the Investigating Officer.

13. As seen from the evidence on record Ex.P18-note book is allegedly in the hand writing of Accused No.2 which was seized under panchanama-Ex.P13. The witness to the Panchanama turned hostile. Both the note books Ex.P17 of A1 and Ex.P18 of A2 were sent to the hand writing expert. In the report/opinion given by Sri K.Vani Prasad, Scientific Officer was approved and

forwarded by the Joint Director of APFSL. Reasons were given regarding the writings in the note books and also in the disputed cheques. However, the hand writing expert was not examined before the trial Court. It is not known as to from which note book the specimen hand writings were taken to compare with the disputed writings and signatures in the cheque. 'S' series and 'Q' series were marked. It is not known which are the questioned writings and signatures marked in 'Q' series and which are the specimens marked in 'S' series. Merely, marking FSL report cannot be made basis to infer that a person had committed forgery. It is the prosecution which has committed a grave error by merely marking the note books and the FSL report through the Investigating Officer. The Investigating Officer is a person who collects evidence and places before the Court. He cannot substantiate the contents of either the note book or the opinion which was given by the hand writing expert. Hand writing of a person can be proved either by a person having acquaintance with the writing or the person who has seen a person writing or by an expert's evidence. Hand writing expert's opinion cannot be made sole basis for conviction. The Hand writing expert was not called in the present case to prove the complicity of petitioner. Merely

marking the hand writing expert's opinion is of no consequence and the prosecution cannot dispense with proving the opinion.

14. The accused did not have the opportunity of examining the hand writing expert who gave Ex.P19 opinion. Not examining the hand writing expert is fatal to the prosecution case. Both the Courts below committed an error in relying on Ex.P19 and convicting the petitioner for the offence under Section 120-B r/w Section 468, 471, 420 of the Indian Penal Code.

15. Firstly, the learned Magistrate has committed an error in framing a charge as under Section 120-B r/w Section 468, 471, 420 of the Indian Penal Code. It is the duty of the learned Magistrate to specifically state in the charge as to how a penal provision is attracted in the facts of the case and frame charge separately for each penal provision, against the accused.

16. For the above mentioned reasons, the revision petitioner succeeds and the findings of the Courts below are liable to be set aside.

17. Accordingly, the Criminal Revision Case is allowed and the conviction of the petitioner/A2 recorded by the III Additional

District and Sessions Judge at Asifabad in Cr1.A.No.37 of 2019 dated 10.02.2022, is hereby set aside.

Miscellaneous applications pending, if any, shall stand closed.

Date: 25.01.2024
Note:L.R copy to be marked.
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K.SURENDER, J

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL REVISION CASE No.180 OF 2020

Dt. 25.01.2024

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