

APHC010652942009



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

[3560]

THURSDAY, THE FOURTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 495/2009

Between:

1. THOSAKANA MADHAVI & ANOTHER, W/O SRIRAM, HOUSEWIFE R/O 1-9-22/C, GNANAPURAM, VISAKHAPATNAM.
2. ADDANKI VENKATA LAKSHMI, W/O LATE RAJA RATNAM, HOUSEWIFE R/O 1-9-22/C, GNANAPURAM, VISAKHAPATNAM.

...PETITIONER(S)

AND

1. THE STATE OF A P, Rep. by the Public Prosecutor, High Court of A.P., Hyderabad.

...RESPONDENT

Revision filed under Section 397/401 of Cr.P.C., 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 CrI.R.C., before this Hon'ble Court against the Judgment dated 25.03.09 in CrI.A.No.37 of 2004 on the file of the Court of the Dist. & Sessions Judge, Vizianagaram, partly confirming the Judgment dated 05.02.04 in C.C.No.255 of 2002 on the file of the Court of the Spl. Judl. First Class Magistrate (Excise), Vizianagaram.

IA NO: 1 OF 2009(CRLRCMP 672 OF 2009)

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 release the petitioners on bail, pending disposal of the Crl.R.C.

Counsel for the Petitioner(S):

1.T V JAGGI REDDY

Counsel for the Respondent:

1.PUBLIC PROSECUTOR

The Court made the following:

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA**CRIMINAL REVISION CASE NO: 495/2009****ORDER:**

1. The petitioners are arrayed the accused in crime No.82 of 2001 and 83 of 2001 for the offence under Sections 380 and 411 of IPC. The learned Trial Court found them guilty and convicted them for the offence punishable under Sections 380 and 411 of IPC and directed them to suffer Rigorous Imprisonment for a period of one (1) year and to pay a fine of Rs.300/- (Rupees three hundred only) each, in default of payment of fine, they shall undergo simple imprisonment for a period of two (2) months each for the offence punishable under Section 380 of I.P.C and further sentenced to suffer Rigorous Imprisonment for a period of six (6) months each and to pay a fine of Rs.200/- (Rupees two hundred only) each, in default of payment of fine, to suffer simple imprisonment for a period of two (2) months each, for the offence punishable under section 411 of I.P.C.,. Both the sentences shall run concurrently. A.1 and A.2 are entitled for set-off of remand period, if any, under Section 428 of Cr.P.C.,. M.O.1 shall be returned to P.W.1, M.o.1 shall be destroyed and M.O.3 shall be returned to P.W.1, after appeal time is over. Against that, they preferred an appeal before the learned Appellant Court. The learned Appellate Court though confirmed Order of conviction, but reduced the sentence to (6) six months. Hence, the instant Criminal Revision Case.

2. The learned Counsel for the Petitioner has pointed out several discrepancies in the case of the prosecution. He submits that it has been alleged against the present Petitioners that they have stolen golden chain from the shop of PW.1, thereafter, PW.1 caught hold them within 100 yards from the shop, reported the police. Thereafter, a case was registered. At that time, PW.3 - another shop owner came to know about the incident also lodged another complaint regarding theft of gold chain from his shop on the same day.

i. The learned counsel for the Petitioners submit that from the prosecution case it would be revealed that the so-called two Gold chains were recovered from the bag of the Petitioners. At that time, one lady constable came, conducted search the persons of Petitioners, but such lady Constable never deposed before the Court. He further submits that the prosecution has also not produced any witnesses to justify the ownership of Gold chains by PW.1 and PW.3. The mediators turned hostile. Thus, the prosecution could not prove the recovery of gold ornaments from the possession of the Petitioners. He further submits that there is a political revelry, between P.W.1 and Accused, thus, the present petitioners were falsely implicated in this case. He further submits that the evidence of investigating officer - PW.7 if scanned out, it would reveal that the investigation was not done properly. The gold chains marked as M.Os.1 and 3, but they were never properly identified by investigating agency before filing charge sheet against the present Petitioners. The learned trial court not properly gone through the evidences on record and has only recorded Order of conviction

on the basis of evidences of PWs.1, 2 and 7. He further submits that the learned Appellate Court has also committed error by not scanning the evidences but only followed the case of the prosecution. He further submits that the Order of conviction against present Petitioners is liable to be set aside.

3. The learned Assistant Public Prosecutor submits that the Gold chains were immediately recovered from the possession of the accused which were stolen from the shop of PW.1. The evidence of PWs.1 and 2 are sufficient regarding the presence of accused persons in their shop. PW.3 also deposed that similar theft has been made in his shop. He further submits that though the mediators turned hostile but their signatures in mediatorsnama, seizure list, has been identified by them. He further submits that the police have conducted proper investigation of this case and submitted charge sheet. Learned Trial court as well as learned Appellate Court has properly gone through the evidence on record, accordingly, the charge has been sufficiently proved. He further submits that the possession of gold ornaments at the time of seizure by the accused persons were not disputed, rather they have not claimed the ownership of the Gold chains at any point of time before the learned Trial Court, which itself shows that they are possessing the God chains from others. Thus, the Order passed by learned Trial Court as well as learned Appellate Court is justified.

4. Having heard the learned counsel for the parties, also considering the entire material as well as evidences placed before the learned Trial Court, it appears that the prosecution case narrated a fact that the accused persons were

apprehended just after commission of theft. Initially, they were apprehended by PW.1. Thereafter, they reported the matter to police; police came to the shop of P.W1 along with a lady constable and searched out the person of the Petitioners. It is further prosecution case that the Gold ornaments were recovered under mediatorsnama in the presence of PW's.5 and 6. PWs.5 and 6 gone hostile though they admitted their signatures on mediatorsnama. During their examination they have stated that police told them to appear in the Police Station wherein they informed that the accused persons have stolen gold chains and put their signatures on mediatorsnama at the dictation of the police personnel. Entire fact goes to show that Accused No.1 and 2 had apprehended by the police in a case of theft of Gold chains on behalf of P.W.1, two Gold chains were recovered from the possession of accused persons. The ownership of gold chains was claimed by PW.1 and PW.3. No documentary evidence placed on record regarding the ownership of gold chains, except their version.

5. The fact also suggests that the accused persons were also not claimed ownership of gold chains. Furthermore, during the investigation, police has also not identified those gold chains by conduction of separate procedure for Test Identification parade before finalizing the charge sheet. So, it is surprising to the instant case that the ownership of two Gold chains was not placed before the Court though it has been claimed by PW.1 and PW.3 that these are the Gold chains stolen from their shops, but no such documents were placed. Recovery of stolen articles from the possession of the Petitioners was also disputed. Without

properly proving seizure of stolen articles, an offence punishable under Section 380 and 411 of I.P.C. is doubtful.

6. The learned Trial Court as well as the learned Appellate Court has gone on wrong notion to follow the evidence of PWs.1, 2 and 3. P.W.1, 2 and 3 admittedly, the private persons who could not prove their ownership over the stolen articles. At this juncture, I find no justification to the observation of the learned Trial Court as well as the Appellate Court to the fact that the prosecution has proved charge against the present Petitioners beyond all reasonable doubt. I can understand that the present petitioners have not uttered anything regarding the ownership of the Gold Chains, but at the same time, it is the duty of the prosecution to bring home the charge beyond all reasonable doubt. If the entire fact taken to be true, then any person can be falsely implicated by private Gold merchants whoever visited their shops.

7. Considering the entire aspect, in my view, the prosecution could not bring home the charge against the present petitioners. Hence, the order of conviction recorded by the learned Trial court, confirmed by the learned Appellate Court, appears to me illegal and bad in Law. Thereby, both are set aside.

8. The instant Criminal Revision Case is meritorious one and the same is allowed. The present Petitioners are acquitted from the case. The case properties i.e., M.O.1 and M.O.3 are to be confiscated to the State as P.W.1 and P.W.3 could not prove their ownership over M.O.1 and M.O.3.

Accordingly, the instant Criminal Revision Case is disposed of.

Consequently, pending miscellaneous applications, if any, shall stand closed.

JUSTICE SAMANTHA SUBENDHU

Date:04.12.2025
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THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

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DATED:04.12.2025.

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