



Crl.R.C. No.1302 of 2023
and Crl.M.P.No.14836 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.R.C.No.1302 of 2023
and
Crl.M.P.No.14836 of 2023

1. Pazhanivel
2. Dhakshinamurthi

...Petitioners

Vs.

State represented by
The Station House Officer
Cuddalore O.T.P.S.
Crime No.87/2010

...Respondent

Prayer : Criminal Revision Case filed under Section 397(1) r/w 401 Cr.P.C. against the judgement dated 29.03.2019 passed in Criminal Appeal No.56/2018, by the I Additional District and Sessions Judge, Cuddalore, partly modifying the judgment dated 13.07.2018 passed in C.C. No.86/2012 on the file of the learned Judicial Magistrate-II, Cuddalore.

For Petitioners : Mr. E.V. Chandru
For Respondent : Mr. R. Vinothraja
Government Advocate (Crl.side)



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ORDER

Challenge in this Criminal Revision is made to the judgment dated 29.03.2019 passed in Criminal Appeal No.56/2018, on the file of the I Additional District and Sessions Judge, Cuddalore, in and by which the conviction made in the judgment dated 13.07.2018 passed in C.C. No.86/2012 on the file of the learned Judicial Magistrate-II, Cuddalore, was confirmed but the sentence was modified.

2. The revision petitioners are the accused in C.C. No.86/2012 on the file of the Judicial Magistrate-II, Cuddalore. The Inspector of Police, Cuddalore Port Police Station, filed a final report against the three accused including the present revision petitioners for the offences under Sections 379 IPC r/w 4(1)(A) r/w Section 21 of the Mines and Minerals (Development and Regulation) Act 1957.

3. The case of the prosecution in a nutshell is as follows:



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3.1 Thiru.Dakshinamurthi (P.W.1), the then Tahsildar of Cuddalore during routine rounds on 22.08.2010 got an information that some miscreants are taking oysters from the river bed of Thiyaagavalli Madura, Nocchikadu Village, and went to the scene of offence along with Ramachandran (P.W.3), Village Administrative Officer of Thiyaagavalli Village and Govindan (P.W.4) his assistant at about 10 p.m. They saw 5 persons loading Oysters (M.O.2) in a lorry bearing Registration No. TN 21 Q 1199 (M.O.1). On seeing the Tahsildar, 4 persons out of 5 made good their escape and the accused Palanivel (1st revision petitioner) was caught hold by the Tahsildar. On enquiry the said Palanivel informed the Tahsildar that he was the driver of the lorry which belonged to one Abdul Azeez (A2) and that they did not have any licence to take Oysters. P.W.1 seized the lorry under the cover of a mahazar (Ex.P2) in the presence of the revenue officials and public. He also recorded the confessional statement of the accused and handed over the accused and the seized vehicle (M.O.1) and oysters weighing 4 tons (M.O.2) to the Station House Officer of Cuddalore Port Police Station along with a complaint (Ex.P1), on the same day i.e. 22.08.2010. P.W.2



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WEB COPY to P.W.4 corroborated the versions of P.W.1.

3.2. Thiru. Annamalai (P.W.5), Special Sub Inspector of Police, Cuddalore Port Police Station, in his deposition had stated that he received the complaint (Ex.P1) on 27.08.2010 from Govindan (P.W.4) and registered FIR (Ex.P3) in Crime No.87/2010 against the three accused, namely, Palanivel, Abdul Azeez and Dhakshinamurthy, for the offences punishable under Sections 379 IPC r/w 4(1)(A) r/w Section 21 of the Mines and Minerals (Development and Regulation) Act 1957. He arrested the accused 1 and 3 and produced them before the concerned Judicial Magistrate for remanding them to judicial custody. He also produced the seized lorry and the oysters under Form 95 (Ex.P4) in the court. He recorded the statements of the witnesses and after completing the investigation laid a final report before the Judicial Magistrate-II, Cuddalore, against the three accused for the offences punishable under Sections 379 IPC and 4(1)(A) r/w Section 21 of the Mines and Minerals (Development and Regulation) Act 1957.

3.3. Since the police could not secure the presence of A2, final



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report was filed showing him in absconding column. The learned Judicial Magistrate, split up the case against A2 in C.C. No.56/17 and tried the case against the present revision petitioners alone.

3.4. The learned Judicial Magistrate after furnishing copies of records to the accused 1 and 3/revision petitioners under Section 207 Cr.P.C., framed charges against them under Sections 379 IPC and 4(1)(A) r/w Section 21 of the Mines and Minerals (Development and Regulation) Act 1957. Since the accused pleaded not guilty, the case was posted for trial.

3.5. On the side of the prosecution, 6 witnesses were examined and 4 documents were marked and 2 Material Objects were also marked. When the accused were questioned under Section 313 Cr.P.C., they denied of having committed any offence. However, no oral/documentary evidence was adduced on their side.



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3.6. After going through the evidence on record, the trial court found the accused 1 and 3 guilty of the offence punishable under Section 379 IPC and sentenced them to undergo Simple Imprisonment for a period of one year, vide judgment dated 13.07.2018. The accused were acquitted under Section 4(1)(A) r/w Section 21 of the Mines and Minerals (Development and Regulation) Act 1957.

3.7. Aggrieved over the said conviction and sentence passed by the Trial Court Judge, the accused 1 and 3 preferred an appeal in Criminal Appeal No. 56 of 2018 before the Additional District and Sessions Judge, Cuddalore. The learned Additional District and Sessions Judge, Cuddalore, confirmed the conviction of the accused for the offence under Section 379 IPC, but however, modified the sentence that the accused should undergo Simple Imprisonment for a period of 6 months. He set off the period of sentence already undergone by them under Section 428 Cr.P.C.



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3.8. Aggrieved over the same, the present Criminal Revision Case is filed.

4. This Court while exercising its revision jurisdiction under Section 397 Cr.P.C. cannot act as a second appellate court. However, Mr.E.V. Chandru, learned counsel for the revision petitioners contended that the story of the prosecution which is built on the materials placed on record seems to be devoid of truth and that the findings of the courts below though concurrent do not merit of acceptance or approval. His contentions are,

- i. P.W.1, though in his deposition had stated that he caught hold of A1 and seized the lorry with oysters on 22.08.2010 at 10. p.m. and handed over the accused, lorry and oysters on the same day to the Station House Officer, Cuddalore Port Police Station, P.W.5, the Sub Inspector of Police had deposed that he received the complaint (Ex.P1) from P.W.4 only on 27.08.2010 and registered FIR on the same date. Thus registration of FIR itself is doubtful.
- ii. P.W.1 had deposed that he recorded the confession statement of



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WEB COPY the accused but it has not seen the light of the day.

- iii. Mahesh (P.W.2) Revenue Inspector during the course of cross examination stated that P.W.1 caught hold of 3 or 4 persons in the place of occurrence and enquired them and that the police reached the spot within half an hour thereby contradicting the versions of P.W.1 and P.W.2.
- iv. There is a delay of 5 days in sending FIR to Court .
- v. Both the courts below have not properly appreciated the evidence on record.

5. Per contra, Mr. R. Vinothraja, learned Government Advocate (Crl.side) contended that both the courts below, after analysing the evidence on record, rightly convicted and sentenced the accused and therefore, no interference is warranted by this court and prayed for dismissal of the Criminal Revision Petition.

6. A bare perusal of the judgments passed by both the courts below shows that both the courts did not analyse the evidence on record.



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The trial court and the appellate court after summarising the chief examination of P.W.1 to P.W.5 had concluded that the accused are guilty of the offence under Section 379 IPC. The judgment of the trial court is extracted hereunder:

“14.ஆவணங்கள் பரிசீலிக்கப்பட்டது. கடலூர் வருவாய் வட்டாட்சியர் 22.08.2010 அன்று இரவு ரோந்து பணியின் போது 2-வது எதிரிக்கு சொந்தமான லாரியினை 3-வது எதிரி வாடகைக்கு எடுத்து 1-வது எதிரி அதன் ஓட்டுநராக இருந்து அதில் கனிமங்கள் மற்றும் சுரங்கங்கள் (வளர்ச்சி மற்றும் முறைப்படுத்துதல் சட்டம் 1957)-ன் கீழ் கனிமமாக கருதப்படும் சுமார் 4 டன் எடையுள்ள சுண்ணாம்பு கிளிஞ்சல்களை உரிய அனுமதி சீட்டில்லாமல் எடுத்தது சம்பந்தமாக மேற்படி லாரியின் ஓட்டுநரையும், லாரி மற்றும் கனிமத்தினையும் கைப்பற்றி 26.08.2010 அன்று தனது புகாரினை தபால் வழியாக கடலூர் துறைமுக காவல்நிலைய உதவி ஆய்வாளருக்கு அனுப்பி அதனை காவல்நிலையத்தினர் 27.08.2010-ல் பெற்று முதல் தகவல் அறிக்கை பதிவு செய்துள்ளனர். பின்னர் மேற்படி லாரி எண்.TN 21- Q- 1199-என்ற பதிவெண் கொண்ட வண்டியும், 4 டன் எடையுள்ள சுண்ணாம்பு கிளிஞ்சல்களும் சி.பி.177/2010-ல் என்பதில் வழக்கு சொத்தாக்கப்பட்டு பின்னர் 20.09.2010-ல் காவல்நிலையம் வசமே நீதிமன்றத்தால் ஒப்படைப்பு செய்யப்பட்டுள்ளது.



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15.2-வது எதிரியை பொறுத்து வழக்கு தனியாக பிரிக்கப்பட்டு சி.சி.56/2017 ஆக உள்ளது.

16.இவ்வழக்கில் வட்டாட்சியர், வருவாய் ஆய்வாளர், கிராம நிர்வாக அலுவலர், கிராம உதவியாளர் ஆகியோர் அ.சா.1 முதல் அ.சா.4 ஆக விசாரிக்கப்பட்டுள்ளனர். அவர்கள் மூலம் அ.சா.ஆ.1 புகாரும் அ.சா.ஆ.2 கைப்பற்றுதல் மகசரம் குறியீடு செய்யப்பட்டுள்ளது.

17.கனிமங்கள் மற்றும் சுரங்கங்கள் (வளர்ச்சி மற்றும் முறைப்படுத்துதல்) சட்டம் 1957 பிரிவு 4(1-A)ன் படி எந்தவொரு நபரும் கனிமங்களை எடுத்துச் செல்லவோ, இருப்பு வைக்கவோ கூடாது. அவ்வாறு செய்பவர் அச்சட்ட பிரிவு 21(1)ன் படி தண்டனைக்குரியவர் ஆகிறார். மேலும் அச்சட்டப் பிரிவு 22ன் படி எந்தவொரு நீதிமன்றமும் அரசாங்கத்தால் நியமிக்கப்பட்ட நபரின் எழுத்து மூலமான புகார் இல்லாமல் எந்தவொரு வழக்கையும் விசாரிக்கக் கூடாது என்று உள்ளது. ஆனால் இவ்வழக்கில் வருவாய் வட்டாட்சியரின் புகாரின் பேரில் முதல் தகவல் அறிக்கையானது கனிமங்கள் மற்றும் சுரங்கங்கள் (வளர்ச்சி மற்றும் முறைப்படுத்துதல்) சட்டம் 1957 பிரிவு 21(1)ன் படியும், இ.த.ச பிரிவு 379-ன் படியும் வழக்கு பதிவு செய்யப்பட்டு, குற்றச்சாட்டு வனையப்பட்டுள்ளது. ஆகவே இந்நீதிமன்றம் அரசால் நியமிக்கப்பட்ட நபரின் எழுத்து மூலமான புகார் இல்லாததினால் கனிமங்கள் மற்றும் சுரங்கங்கள் (வளர்ச்சி மற்றும் முறைப்படுத்துதல்) சட்டம் 1957 பிரிவு 21(1)ன் படி மேற்படி வழக்கானது தள்ளுபடி செய்யப்பட வேண்டுமென்று தீர்மானிக்கிறது.



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18.மேலும் இ.த.ச பிரிவு 378-ன்படி எந்தவொரு நபரின் அனுமதியில்லாமல் ஒரு அசையும் சொத்தினை அவருடைய உடமையில் இருந்து நேர்மையற்ற வழியில் எடுப்பாரேயானால் அது திருட்டு குற்றமாகும். கனிமங்கள் மற்றும் சுரங்கங்கள் (வளர்ச்சி மற்றும் முறைப்படுத்துதல்) சட்டம் 1957-ன் படி ஆற்றுப் படுகைகள், துறைமுக கடற்கரை பகுதிகளில் இருக்கும் எந்தவொரு கனிமமும் அரசுக்கு சொந்தமானதாகும். அந்த கனிமங்களை உரிய அனுமதியின்றி எடுக்கும் செயல்களுக்கான தண்டனை விவரங்களை மேற்படி சட்டம் விவரிக்கிறது. ஆனால் பொதுச்சட்டமான இ.த.ச பிரிவு 378-ன் படி 1 மற்றும் 3-வது எதிரிகளின் செய்கையானது இ.த.ச பிரிவு 379ன் படி தண்டிக்கத்தக்க குற்றமாகும். அரசு தரப்பு 1 மற்றும் 3 எதிரிகள் மீதான குற்றத்தை சந்தேகத்திற்கு அப்பாற்பட்டு இதச பிரிவு 379-ன் படி நிரூபித்துள்ளனர் என இந்நீதிமன்றம் முடிவு செய்கிறது. ஆகவே 1 மற்றும் 3 எதிரிகள் இ.த.ச. பிரிவு 379-ன் படி தண்டிக்கத்தக்க குற்றத்தை புரிந்துள்ளதாக இந்நீதிமன்றம் தீர்மானிக்கிறது.”

The judgment of the appellate court is as under :

17. *"In order to prove the case prosecution has cited 9 witnesses and has examined six witnesses as P.W.1 to P.W.6 and Ex.P1 to Ex.P4, M.O.1 and M.O.3 have been marked. On the side of the accused no oral or documentary*



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18. The P.W.1 Dakshinamurthy has deposed to the effect that on 22.08.2010 at 10.00 p.m. when he was on rounds, he got information over phone that in Nochikadu area, near River Bank, shells to be taken. Immediately, he went there and found that there was a lorry and five persons are loading the shells in the lorry and on seeing him, except the driver other 4 have run away. When the driver was examined, he said that his name is Pazhanivel. No licence for taking shells with him. He informed him that without licence, taking of shells is an offence. He seized the lorry through a mahazar. He recorded the confession statement. He handed over lorry with shells to the Port Police Station, Cuddalore. Ex.P1 is his complaint. Ex.P2 is the Mahazar. M.O.1 is seized lorry bearing No.TN 21 ACA 1199 and M.O.2 is the shells weighing 4 tones.

19. The P.W.2 is the Revenue Inspector, P.W.3 is the Village Administrative Officer and P.W.4 is the Village



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Assistant. The evidence of P.W.2,P.W.3 and P.W.4 are well corroborating the evidence of P.W.1. The P.W.5 is the Sub Inspector of Police and P.W.6 is the Inspector of Police who had deposed about their part in the investigation. The evidence of P.W.1 to P.W.6 are cogent and satisfactory.

20. After trial, the learned Judicial Magistrate No.2, Cuddalore acquitted the Accused 1 to 3 under Section 21(1) of the Mines and Minerals Act 1957 and has convicted the accused 1 and 3 under Section 379 IPC and sentenced to undergo Simple Imprisonment for one year. In view of Section 248(2) Cr.P.C. The evidences of P.W.1 to P.W.6 remains stable, even after cross examination. There is no infirmity in the judgment of the learned Judicial Magistrate, No.II, Cuddalore. Hence, it warrants no interference. As such, the judgment of the learned Judicial Magistrate No.II, Cuddalore, is confirmed. However, on considering the age of the accused, nature of the offences their socio economic back ground it is decided to modify the sentence of



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WEB COPY *imprisonment. Accordingly, the accused 1 and 3 are convicted under Section 379 IPC and sentenced to undergo Simple Imprisonment for 6 months".*

Thus it is clear the evidence of P.W.1 to P.W.5 have not at all been analysed especially when there are glaring discrepancies in their evidence, as rightly pointed out by the learned counsel for the revision petitioners. When P.W.1 states he saw five persons loading the lorry bearing Registration TN 21 Q 1199 (M.O.1) and four persons made good their escape on seeing the team of revenue officials, P.W.2 has deposed that P.W.1 enquired all the five persons at the spot. According to P.W.1, he seized the vehicle (M.O.1) after recording the confessional statement of the 1st revision petitioner Palanivel and handed over the accused, lorry and oysters on the same night of 22.08.2010 along with his complaint (Ex.P1) to the Station House Officer, Cuddalore Port Police Station. On the contrary P.W.5 had deposed that he received the complaint from P.W.4 only on 27.08.2010 and registered FIR on the same date. This is also infact clearly mentioned in the FIR. Thus the basis on which the FIR is registered itself is highly doubtful. The so



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called 'confessional statement' of A1 was also not marked. The seizure mahazar (Ex.P2) states that lorry (M.O.1), oysters (M.O.2) were seized in the presence of public. None of the witnesses were examined to prove the alleged seizure. There is also a delay of 5 days in sending the FIR to court.

7. Apart from this, according to the police, A2 is absconding and the final report was filed showing him as absconding accused and the learned Judicial Magistrate-II, Cuddalore, split up the case as against him in CC No.56/2017. However, it is perplexing to note that the Lorry (M.O.1) was returned to A2 by the concerned Judicial Magistrate.

8. Be that as it may, there are many inconsistencies and irregularities in the case of the prosecution as rightly pointed out by Mr.E.V.Chandru, learned counsel for the revision petitioners. Merely because the witnesses are official witnesses, their evidence cannot be treated as Gospel truth. Hence the benefit of doubt is given to the accused and the accused are acquitted of the offence under Section 379



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9. In the result,

- i. the Criminal Revision Case is allowed. Consequently, connected Criminal Miscellaneous Petition is closed.
- ii. the judgement dated 29.03.2019 passed in Criminal Appeal No.56/2018, on the file of the I Additional District and Sessions Judge, Cuddalore. and the judgment dated 13.07.2018 passed in C.C. No.86/2012 on the file of the learned Judicial Magistrate-II, Cuddalore, are set aside.
- iii. The accused are acquitted from the charges of which they are charged

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



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To

1.State represented by
The Station House Officer
Cuddalore O.T.P.S.
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2.The I Additional District and Sessions Judge, Cuddalore.

3.The Judicial Magistrate-II, Cuddalore.



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and Crl.M.P.No.14836 of 2023

R. HEMALATHA, J.
bga

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27.09.2023