



Crl.R.C(MD)Nos.405, 581 and 383 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.04.2023

PRONOUNCED ON : 06.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)Nos.405, 581 and 383 of 2015

1.Crl.R.C(MD)No.405 of 2015:-

Justin

... Petitioner/
Appellant/Accused No.1

Vs.

The Inspector of Police,
Maruvur Police Station,
Thanjavur District.
(In Crime No.48 of 2010)

... Respondent/
Respondent/ Complainant

PRAYER: Criminal Revision Case filed under Section 397 and Section 401 of the Code of Criminal Procedure, to call for the records of the impugned Judgment dated 25.06.2015 in C.A.No.19 of 2015 passed by the learned II Additional District and Sessions Judge, Thanjavur, confirming the order dated 27.02.2015 passed in C.C.No.3 of 2013 on the file of the learned Additional Chief Judicial Magistrate, Kumbakonam and set aside the same by allowing the revision petition and acquit the revision petitioner.

For Petitioner : Mr.R.L.Dhilipan Pandian
for Mr.P.Samuvel Gunasingh

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor



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2.Crl.R.C(MD)No.581 of 2015:-

Altrine Prabhu

... Petitioner/
Appellant/Accused No.2

Vs.

The Inspector of Police,
Maruvur Police Station,
In Crime No.48 of 2010,
Kumbakonam,
Thanjavur District.

... Respondent/
Respondent/ Complainant

PRAYER: Criminal Revision Case filed under Section 397 and Section 401 of the Code of Criminal Procedure, to call for the records relating to the Judgment in C.A.No.20 of 2015 dated 25.06.2015 passed by the learned II Additional District and Sessions Judge, Thanjavur, confirming the conviction passed by the learned Additional Chief Judicial Magistrate, Kumbakonam in C.C.No.3 of 2013 dated 27.02.2015 and set aside the same and allow this revision.

For Petitioner : Mr.N.Ananda Kumar

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

3.Crl.R.C(MD)No.383 of 2015:-

Dhivakar

... Petitioner/
Appellant/Accused No.4

Vs.



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The Inspector of Police,
Maruvur Police Station,
Thanjavur District.
(Crime No.48 of 2010).

... Respondent/
Respondent/ Complainant

PRAYER: Criminal Revision Case filed under Section 397 and Section 401 of the Code of Criminal Procedure, to call for the records in C.A.No.20 of 2015 dated 25.06.2015 passed by the learned II Additional District and Sessions Judge, Thanjavur, confirming the conviction passed in C.C.No.3 of 2013 dated 27.02.2015 by the learned Additional Chief Judicial Magistrate, Kumbakonam and set aside the same and allow this revision.

For Petitioner : Mr.N.Mohideen Basha

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

COMMON ORDER

Crl.R.C(MD)Nos.405, 581 and 383 of 2015 have been filed to set aside the Judgment in C.A.Nos.19 & 20 of 2015, dated 25.06.2015 on the file of the learned II Additional District and Sessions Judge, Thanjavur, confirming the conviction and sentence in C.C.No.3 of 2013, dated 27.02.2015 passed by the learned Additional Chief Judicial Magistrate, Kumbakonam.



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2.Both the revisions, arising out of the single trial, were taken up together and disposed of by common order.

3.The case of the prosecution is that on 06.06.2010 some metal idols were stolen by unknown persons from 'Thilaisthanam Arulmighu Girutha Pureeshwarar Temple' worth about Rs.2,56,700/-. On the complaint lodged by P.W.1, the respondent registered the F.I.R in Crime No.48 of 2010 for the offence under Sections 457(2) and 380(2) of I.P.C. After completion of the investigation, the respondent filed a final report and the same has been taken cognizance by the trial Court in C.C.No.3 of 2013 on the file of the learned Additional Chief Judicial Magistrate, Kumbakonam as against four accused persons.

4.Before the trial Court, the prosecution had examined P.W.1 to P.W.20 and marked Exs.P.1 to P.19 and produced material object M.Os.1 to 10. On the side of the accused, no one was examined and no documents were exhibited.



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5. On perusal of oral and documentary evidence, the trial Court found the accused guilty for the offence punishable under Section 457(2) of I.P.C and Section 380(2) of I.P.C. They were sentenced to undergo three years Rigorous Imprisonment and to pay a sum of Rs.5,000/- each, in default to undergo three months Simple Imprisonment for the offence punishable under Section 457(2) of I.P.C. Further, they were sentenced to undergo two years Rigorous Imprisonment and to pay a sum of Rs.2,000/- each, in default to undergo three months Simple Imprisonment for the offence punishable under Section 380(2) of I.P.C. Aggrieved by the same, the first accused preferred an appeal in C.A.No.19 of 2015 and the second and fourth accused preferred an appeal in C.A.No.20 of 2015 on the file of the learned II Additional District and Sessions Judge, Thanjavur, and the same was also dismissed by a common order, confirming the conviction and sentence imposed by the trial Court. Aggrieved by the same, the present Revision.

6. The learned counsel appearing for the petitioner/Accused No.1 in Crl.R.C(MD)No.405 of 2015 would submit that there are totally four accused, in which Accused No.3 had already undergone the entire period of sentence. P.W.18 to P.W.20



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were not the jurisdictional Inspectors of Police, Maruvur Police Station and as such, they had no jurisdiction to investigate the case and file a final report in Crime No.48 of 2010. Hence, the entire charge sheet is non-est in the eye of law and the same ought not to have been accepted by the trial Court. Therefore, the entire conviction and sentence imposed by the Courts below are liable to be set aside. P.W.19 deposed that he had taken investigation on receipt of the information that A.1 and A.2 were remanded to judicial custody in connection with Crime No.5 of 2010 and went there and made a formal arrest on 30.08.2010. Thereafter, he had taken them for custodial interrogation and obtained confession statement. The admissible portion of the petitioner's conviction was marked as Ex.P.5. Accordingly, he stated that if he is brought to that place, he would show the Kiruthapureeswarar Temple where they committed theft of idols. He would show the place on the Banks of the river Cauvery where he had concealed the idols and would show the drainage in which he had thrown the Pradhosa Nayagar idol that was later on given to Babu of Hosur. However, the said statement did not lead to any recovery. It is inadmissible in evidence under Section 27 of the Indian Evidence Act for the reason that those sentences did not reveal anything about the concealment of the idols supposed to have been stolen by them. This information



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permitted to be admitted under Section 27 of the Indian Evidence Act is confined to that portion of the information which distinctly relates to the facts thereby discovered. Mere the said statement lead P.W.19 to the place where he had concealed the idols is not indicative of the information given.

7.The learned counsel appearing for the petitioner/Accused No.1 in Crl.R.C(MD)No.405 of 2015 would further submit that P.W.16 and P.W.17 were attached to the Anti Idol Theft Wing Police Station, Chennai. On receipt of the information, both went to Marina Beach and found A.1 and A.2 and they were in unlawful possession of an Amman idol and two broken pieces of Thirvachi idols which were concealed in a bag and the same were seized under the seizure mahazar which was marked as Ex.P.14 and they were arrested at about 04.00 p.m., on 19.08.2010. The confession statement was also recorded from the first accused by P.W.17. The admissible portion of his confession statement was marked as Ex.P.16. It reads that if he is brought to that place, he would show the Kiruthapureeswarar Temple at Thillaisthanam where they committed theft of idols. He would show the place on the Banks of the river Cauvery where he had concealed the remaining



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idols and would show the drainage near Chathiram Bus Stand in Trichy, in which he had thrown the Pradhosa Nayagar idol that was later given to Babu of Hosur. Thereafter, P.W.17 registered the F.I.R in Crime No.05 of 2010 for the offence under Sections 41(d) and 102 of Cr.P.C, which was marked as Ex.P.15. Thereafter, they proceeded to Thillaisthanam in the night on 19.08.2010 and reached there on 20.08.2010. As identified by Accused Nos.2 and 3, a broken Natarajar idol, Sivakami Amman idol and Chandrasekarar idol which were concealed on the Banks of the river Cauvery was discovered and the same were recovered under the cover of mahazar, which was marked as Ex.P.4. Thereafter, P.W.17 altered the offence into Section 380(2) of I.P.C and they were remanded to judicial custody. The seized idols were also produced under Form 95 before the learned Metropolitan Magistrate No.II, Egmore, Chennai. Therefore, Ex.P.14, Ex.P.15, Ex.P.4 and Ex.P.16 are not admissible in evidence and all the materials objects collected by P.W.16 and P.W.17 have no evidentiary values.

8.In support of his contention, the learned counsel appearing for the petitioner/Accused No.1 in Crl.R.C(MD)No.405 of 2015 relied on the following Judgments:-



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**"(i) Pudukuri Kottaya and others
Vs. Emperor [Manu/PR/0049/1946];**

**(ii) Ramanand @ Nandlal Bharti
Vs. State of Uttar Pradesh [2022 LiveLaw
(SC) 843];**

**(iii) Subramanya Vs. State of
Karnataka [2022 SCC Online SC 1400]; and**

**(iv) Bobby Vs. State of Kerala
[2023 LiveLaw (SC) 50]"**.

9.The learned counsel appearing for the petitioner/Accused No.2 in Crl.R.C(MD)No.581 of 2015 would submit that P.W.1 categorically admitted that he maintained the register in connection with the Temple properties and he produced the same before the respondent, however, it was not produced before the Court. In fact, P.W.1 also produced the photograph of the alleged stolen idols and the same was also not produced before the trial Court. Therefore, the prosecution failed to prove that the allegedly seized idols from the accused belonging to Vimochana Perumal Temple. All the idols were made of Panchalogam. Whereas in the F.I.R and the charge-sheet alleged that all the stolen idols are made of bronze. There are discrepancies between P.W.1 and P.W.3 in



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respect of the time of the theft. The confession statement of Accused Nos.1 and 2 was recorded and accordingly, they had recovered the idols in the presence of witnesses Kumar and Subburaj and the admitted portion was marked as Ex.P.14. However, the prosecution failed to examine them as witnesses. Therefore, the conviction and sentence cannot be sustained as against Accused No.2.

10.The learned counsel appearing for the petitioner/Accused No.4 in Crl.R.C(MD)No.383 of 2015 would submit that only on the confession statement of co-accused, the petitioner has been implicated as an accused. After the arrest of Accused Nos.1 and 2, 2-1/2 months later, on suspicion, that too at Chennai, the petitioner/Accused No.4 was arrested and remanded to judicial custody on 01.09.2010. The prosecution failed to prove that M.O.1 to M.O.7 belongs to 'Thillaisthanam Arulmighu Girutha Pureeshwarar Temple'. In respect of recovery from Accused No.4, P.W.11 and P.W. 14 were stood as witnesses. However, they turned hostile before the trial Court and as such, the confession statement and recovery were not proved by the prosecution as against the petitioner. As per the case of the prosecution, P.W.1 deposed that the idols are made in



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Panchalotal metal, but in the F.I.R stated the stolen idols are made in Bronze. Therefore the vital contradiction disprove the case of the prosecution and it is fatal to the case of the prosecution and hence, he prayed for acquittal of Accused No.4 from all the charges.

11.Per contra, the learned Additional Public Prosecutor would submit that there are totally four accused in which the petitioners were arrayed as Accused Nos.1, 2 and 4 have preferred appeals. A.3 had already undergone the entire period of sentence. In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.20 and marked Exs.P.1 to P.19. M.O.1 to 7, which were stolen by the accused from the Temple, M.O.9 and M. 10, which were used for the theft committed by them and the broken lock was produced as M.O.8. P.W.1 lodged a complaint and had spoken about the theft of idols which were kept in 'Thilaisthanam Arulmighu Girutha Pureeshwarar Temple', which were under lock and key. The Archakars were examined as P.W.2 and P.W.3 and they had spoken that the idols were kept in the Temple and they used to do poojas for the said idols. The admitted portion of the confession statement was marked as Ex.P.5 and Ex.P. 16. The confession statement lead to the recovery of M.O.1 to M.O.



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7. The recovered idols were duly identified by the complainant and as such, both the Courts below rightly convicted and sentenced them. The conviction and sentence are concurrently held and as such, it does not warrant any interference by this Court.

12. Heard the learned counsels appearing on either side and perused the materials available on record.

13. There are totally four accused, in which the petitioners are arraigned as Accused Nos.1, 2 and 4 and Accused No.3 had already undergone the entire sentence. The learned counsels appearing for the petitioners mainly contended that the recovery is not in accordance with law. The idols which were recovered as per the confession statement were not duly identified by the defacto complainant and it violates the provision under Section 27 of the Indian Evidence Act. In support of the said contention, the learned counsel appearing for the revision petitioner/Accused No.1 relied upon the Judgment in ***Pulukuri Kottaya and others Vs. Emperor [Manu/PR/0049/1946]***, in which, the Privy Council held that Section 27, which is not artistically worded, provides an exception to the prohibition imposed



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by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.

14.Further, the learned counsel appearing for the petitioner/Accused No.1 mainly contended that when the petitioner/Accused No.1 did not even locate the correct location of the idols which were allegedly kept by the accused and the prosecution failed to prove the contents of the discovery panchanama, since the mahazar witnesses turned hostile. In support of the said contention, he relied upon the Judgment of the



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Honourable Supreme Court of India in **Ramanand @ Nandlal**

Bharti Vs. State of Uttar Pradesh [2022 LiveLaw (SC) 843], in

which, it is held as follows:-

"53. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to



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point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that 16 particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.”

Whereas, in the case on hand, P.W.16 and P.W.17, on receipt of the information, went to Marina Beach, where they found Accused Nos.1 and 2 were in possession of an Amman idol and two broken pieces of Thirvachi idols concealed in a bag and the same was seized under the cover of mahazar, which was marked as Ex.P.14. In pursuant to the said recovery, they were arrested at about 04.00 p.m., on 19.08.2010. After their confession statement, F.I.R was registered in Crime No.05 of 2010. As per their confession statement, they went to the river Cauvery and as per the information given by them,



"4. Power of court to release certain offenders on probation of good conduct.—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond."

In the case on hand, it is a case of theft of idols from 'Thilaisthanam Arulmighu Girutha Pureeshwarar Temple'. The idols were recovered from them and the prosecution also proved its case beyond any doubt.



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16.Considering the gravity of the offence and the manner in which they committed theft, the petitioners are not entitled to release under the Probation of Offenders Act, 1958.

17.Accordingly, these Criminal Revision Cases are dismissed and the Judgment made in C.A.Nos.19 & 20 of 2015 dated 25.06.2015 passed by the learned II Additional District and Sessions Judge, Thanjavur and the conviction and sentence made in C.C.No.3 of 2013, dated 27.02.2015 passed by the learned Additional Chief Judicial Magistrate, Kumbakonam is confirmed. The trial Court is directed to issue orders to secure the petitioners/Accused Nos.1, 2 and 4 to serve the remaining period of sentence.

06.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

- 1.The II Additional District and Sessions Judge,
Thanjavur.
- 2.The Additional Chief Judicial Magistrate,
Kumbakonam.
- 3.The Inspector of Police,
Maruvur Police Station,
Thanjavur District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

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Pre-Delivery Order made in
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06.04.2023