

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2023

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.100 of 2016

S.Saroja

... Petitioner

Vs.

State rep by
Sub Inspector of Police
Central Crime Branch,
Tuticorin.

... Respondent

PRAYER : Criminal Revision filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records from the Lower Courts and to duly set-aside the judgment passed by the 2nd Additional Sessions Judge, Tuticorin, Tuticorin District in C.A.No.26 of 2015 dated 18.11.2015 in confirming the Judgement of the Judicial Magistrate No.2 Tuticorin in C.C.No.33/2003 dated 15.04.2015 by allowing this revision.

For Petitioner : Mr.S. Senthil

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

ORDER

This Criminal Revision Petition has been filed to set aside the judgment passed by the learned 2nd Additional Sessions Judge, Tuticorin, Tuticorin District in C.A.No.26 of 2015 dated 18.11.2015 confirming the Judgement of the Judicial Magistrate No.2 Tuticorin in C.C.No.33 of 2003 dated 15.04.2015.

2.The case of the prosecution is that from the year 1997 to 2022, the first accused was working as Sales Man in the defacto complainant's AVM jewelry shop. He had stolen 2,065 grams gold worth about Rs.10,32,500/-. Thereafter, even knowing those jewels were stolen, A2 and A3 received the same and they used to pledge some jewels and sold out some jewels. Based on the complaint lodged by the defacto complainant, the respondent registered a case in Cr.No.633 of 2002. After completion of investigation, the respondent filed final report and the same has been taken cognizance in C.C.No.33 of 2003 for the offence punishable under Sections 381 and 414 IPC. Insofar as he petitioner

herein is concerned, she was charged under Section 414 IPC. In order to prove the charges, the prosecution had examined P.W.1 to P.W.13 and marked Ex.B.1 to Ex.B24. No Documents has been marked by either side. On the side of the accused, no one was examined. On perusal of oral and documentary evidence, the trial Court, convicted the first accused for the offence punishable under Section 381 IPC and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/- , in default, to undergo six months simple imprisonment and also convicted the petitioner herein for the offence punishable under Section 414 IPC and sentenced her to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment. Insofar as the third accused is concerned, he was acquitted by the trial Court. Aggrieved over the same, the petitioner preferred an appeal and the same was dismissed by the appellate Court confirming the conviction imposed by the trial Court. Hence, the present revision.

3.The learned counsel appearing for the petitioner would submit that the petitioner now aged about 67 years and she already undergone 40

days of imprisonment. At the time of seizing of jewels from the petitioner, there were two witnesses. However, the prosecution failed to examine one witness and only one person was examined by the prosecution. Therefore, he prayed for reduction of sentence.

4.Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that on recording the confession statement of the first accused, the petitioner herein was found in possession of jewels, which were stolen by the first accused. The third accused was acquitted only for the reason that he is none other than the son of the petitioner herein. He was also present along with her, at the time of seizure of the jewels. Therefore, the trial Court rightly acquitted the third accused. As far as the petitioner herein is concerned, after recovery of all jewels, she was taken to her house wherein the first accused was also present. Therefore, the prosecution categorically proved its case beyond any doubt and the trial Court rightly convicted the petitioner for the offence punishable under Section 414 IPC.

5.Heard both sides and perused the materials available in the

record.

6.It is seen that there are totally three accused in this case, in which, the petitioner herein arrayed as A2. According to the case of the prosecution, the first accused had stolen jewels from the defacto complainant's jewelry shop weighing 2,065 grams gold worth about Rs.10,32,500/-. The petitioner had received the jewels from A1 in order to sold out and had taken share in the sale proceedings with A1. Therefore, the petitioner charged for the offence punishable under Section 414 IPC. P.Ws.3, 9, 11 and 12 were turned hostile. The first accused was working as Sales Man in the defacto complainant's jewelry shop. On confession of the first accused, the petitioner herein had been implicated as accused and there was recovery. P.Ws.3 and 4 were spoke about the observation magazar. Reading the evidence of P.W.8, he categorically stated that when the petitioner was standing, in a suspecting manner, opposite to the flower shop, near Police Station and when P.W.8 enquired her, she herself handed over the jewels, which was possessed by her. Therefore, the possession and recovery were proved by the prosecution. Therefore, both Courts below rightly convicted the

petitioner for the offence punishable under Section 414 IPC and hence, this Court finds no infirmity or illegality in the orders passed by the Courts below. Insofar as the sentence is concerned, the petitioner was sentenced to undergo one year rigorous imprisonment. Considering the age of the petitioner and also the fact that A1 was died, this Court is inclined to reduce the sentence to the period already undergone by her. Accordingly, this criminal revision petition is partly allowed and the conviction under Section 414 IPC is hereby confirmed and the sentence alone reduce from one year rigorous imprisonment to the period already undergone by the petitioner.

20.03.2023

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

1. 2nd Additional Sessions Judge,
Tuticorin.
- 2.The Judicial Magistrate No.2,
Tuticorin.
- 3.The Sub Inspector of Police,
Central Crime Branch,
Tuticorin.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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G.K.ILANTHIRAIYAN,J.

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