

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.831 of 2009

S.Thiruvengadam

.. Petitioner

Versus

The State rep. by the
The Sub Inspector of Police
H-5, Police Station
New Washermenpet
Chennai 600 081.

.. Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 20.08.2009 passed by the learned III Additional Judge, City Civil Court, Chennai in C.A.No.188 of 2008 modifying the order dated 09.06.2008 passed by the learned XV Metropolitan Magistrate, George Town, Chennai in C.C.No.15747 of 2007.

For Petitioner : Mr.M.Velmurugan
For Respondent : Mr.V.Arul
Government Advocate (Crl.side)

ORDER

The petitioner is the sole accused in C.C.No.15747 of 2007 on the file of the learned XV Metropolitan Magistrate, George Town, Chennai and he was convicted for the alleged offence under Sections 380, 420, 419 and 468 IPC and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, for each of the offences, in default, to undergo rigorous imprisonment for one month, for the offence under Sections 380, 420 and 419 IPC and one month simple imprisonment for the offence under Section 468 IPC and the sentences were ordered to run concurrently. As against the conviction and sentence imposed, the petitioner preferred Crl.Appeal No.188 of 2008, which by judgment dated 20.08.2009 while confirming the conviction, modified the sentence imposed by the trial Court into 18 months instead of three years. Aggrieved by the same, the present Criminal Revision Case is filed.

2. The brief case of the facts is as follows:

On 25.09.2007 at about 8.22 p.m the complainant after withdrawing the cash from ICICI Bank ATM Centre at Thiruvottiyur High Road, Chennai using ATM Card had misplaced the card there itself. The petitioner, who was working as a Security in the said ATM Centre, instead of handing over the card to the complainant had misused the same and had purchased three sovereigns of gold jewel to the tune of Rs.22,800/- by putting the signature of the defacto complainant. Hence, the complaint.

3. The learned counsel appearing for the petitioner argued only on sentence and not on merits. He would submit that the petitioner is the sole breadwinner in the family and he belongs to a poor family. Moreover, he has got two girl children to look after. Accordingly, he would pray for leniency in awarding of sentence.

4. Learned Government Advocate (Criminal Side) appearing on behalf of the respondent submitted that the offence is proved and he being the Security attached to the ATM Centre should not indulge in such activities. Hence, both the Courts below considering the same awarded the punishment, warranting no interference in this revision. However, he would also state that the petitioner is a first time offender.

5. Heard both sides and perused the records. PW1, who is the complainant has deposed categorically that he has misplaced the ATM card in the ATM Centre itself. However, when he enquired the same with the Security attached to the said ATM Centre, he denied. But on the very next day, the accused has purchased the gold jewellery using the said ATM card by putting the complainant's signature, which has been proved beyond reasonable doubt. It is the duty of the Security guard to be careful in each and every activities. When that being so, he himself has indulged in such criminal activities. Hence, both the Courts below have convicted the accused, warranting no interference in this revision.

6. As far as reduction of sentence, the learned counsel for the petitioner prayed this Court to consider reducing the sentence taking into consideration that the petitioner is a first time offender; that he is the only bread winner in his family, having two girl children to look after and that he has already undergone 80 days of imprisonment. Considering the request of the counsel for the petitioner, while upholding the conviction imposed on the petitioner by the Courts below, I am inclined to reduce the sentence imposed by the trial Court for three years and modified by the first appellate Court into 18 months into one of six months. Accordingly, the sentence imposed on the petitioner is reduced to six months. It is needless to mention that the period of sentence already undergone by the petitioner shall be given set off under Section 428 of Cr.P.C. Further, the trial Court is directed to take appropriate steps as are necessary to secure the presence of the petitioner/accused to undergo the remaining period of sentence now modified by this Court.

7. With the above direction, this Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The III Additional Judge,
City Civil Court, Chennai.
 2. The XV Metropolitan Magistrate,
George Town, Chennai.
 3. Thro' Chief Metropolitan Magistrate George, Chennai.
 4. The Public Prosecutor, Madras
- + 1 cc to Mr.M. Velmurugan, Advocate Sr.48397

Crl RC No.831 of 2009

LRS (CO)
Eu 05.10.15



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