



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.L.RC(MD) No.543 of 2014

Dharmaraj

... Petitioner/Appellant/Sole Accused

-vs-

State Rep.by

The Sub-Inspector of Police,

Vadipatti Police Station, Madurai

(Crime No.403 of 2008) ... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for the records of the learned IV Additional District and Sessions Judge, Madurai in CrI.A.No.11 of 2013 by Judgment dated 08.12.2014, confirming the conviction and sentence of imprisonment imposed by the learned District Munsif-cum Judicial Magistrate, Vadipatti in C.C.No.14 of 2009, dated 18.09.2012 set aside the Judgments of the Courts below.

For Petitioner: Mr.P.Kalimuth

For Mr.Mahendrapathi

For Respondent: Mrs.S.Prabha, Govt.Advocate (CrI.Side)

ORDER

This revision by the accused is to challenge the legality of the conviction and sentence awarded to him in C.C.No.14 of 2009 by the learned Judicial Magistrate, Vadipatti, as confirmed by the learned IV Additional Sessions Judge, Madurai in CA.No.11 of 2013.

2. Before the trial Court the revision petitioner was tried for an offence under Section 379 IPC. To establish the charge prosecution examined P.Ws.1 to 8, marked Exs.P1 to P7 and exhibited M.O.1.

3. Relying on the said evidence, the trial Court convicted the revision petitioner under Section 379 of IPC and sentenced him to two years rigorous imprisonment. Thereafter, the convicted person preferred criminal appeal in C.A.No.11 of 2013. The learned IV Additional Sessions Judge, Madurai, upholding the judgment of the trial Court dismissed the criminal appeal.

4. Now, this criminal revision is directed under Section 397 of Cr.P.C., by the accused challenging the legality and propriety of the conviction and sentence rendered by the said Courts.

<https://hcservices.ecourts.gov.in/hcservices/>

5.The case of the prosecution in brief is that on 04.02.2009,



P.W.1 and her husband P.W.2 have travelled in a bus from Pallapatti to Vadipatti. P.W.1 was keeping her five sovereign gold chain in a money purse in a bag. In the middle, when she has opened the purse, to buy the ticket, the purse was missing. She screamed. P.Ws.2, 3 and 4 their co-passengers have also stated so. P.W.1 lodged Ex.P1 complaint with P.W.7 Sub-Inspector of Police, Vadipatti. He registered this case under Section 379 IPC (Ex.P6 F.I.R.). On 27.12.2008, P.W.5 had travelled in a bus. At Thanichiyam bus stop, a woman boarded the bus. She screamed that Rs.24,000/- kept by her in a bag was missing. She pointed out the revision petitioner, as thief. He was apprehended by P.Ws.5 and 6. They took him to Vadipatti Police Station. P.W.8 Inspector Vimala took up her investigation. The accused gave her Ex.P7 confessional statement. It was attested to by P.Ws.5 and 6. In pursuance of that, the accused took them to his house, produced M.O.1 gold chain and also another gold chain. They were seized by P.W.8 in the presence of P.Ws.5 and 6 under Ex.P3 Mahazar. Concluding her investigation, P.W.8 filed the final report for an offence under Section 379 IPC., before the learned Judicial Magistrate, Vadipatti.

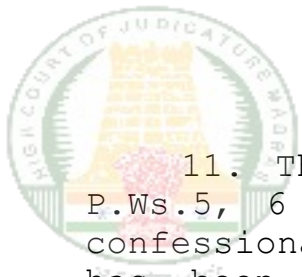
6. Mainly relying on the recovery evidence of P.Ws.5, 6 and 8, the learned Magistrate has convicted and sentenced the accused. The appellate Court also took the same view.

7. The learned counsel for the revision petitioner would contend that P.Ws.5, and 6 in their evidence did not support the prosecution version. They have stated that in blank papers their signatures were obtained at the police station. Both the courts fell into error in recording conviction based on the evidence of P.Ws.5 and 6. And P.W.8 is a police woman. Thus the conviction and sentence are unsustainable in law.

8. On the other hand, the learned Government Advocate (crl.side) would submit that P.Ws.5 and 6 have stated clearly that they have witnessed the recording of the confession from the accused and also recovery of M.O.1. Thus, the trial Court and the appellate Court have rightly convicted him.

9. I have given my deep consideration to the rival submissions. Perused the impugned judgment and also the entire materials on record.

10. P.W.1 is the author of Ex.P1, complaint. She is the owner of M.O.1, gold chain. Her husband is P.W.2. Their co-passengers are P.Ws.3 and 4. None of them have seen the accused stealing the money purse from P.W.1's bag. Subsequently, the accused is stated to be involved in another theft case near Tanichiyam Bus Sand. That cannot be used to convict the accused in the present case.



11. The Courts below have mainly relied on the evidence of P.Ws.5, 6 and 8. They were examined to show that based on the confessional statement (Ex.P7) of the accused, M.O.1 gold chain has been recovered from the house of the accused in their presence. However, in their cross examination they have stated that on the direction of the police at their police station they have put their signatures in some blank papers. It is pertinent to note that they were not treated as hostile and cross examined by the prosecution and that they were also not reexamined by the prosecution with the permission of the Court. Thus, their said evidence given by them in their cross-examination remained unchallenged. Their such evidence completely washed away their evidence given in their chief examination. In such view of the matter, when the evidence of P.Ws.5 and 6 so also P.W.8 is of such a nature nothing incriminating is available to convict the accused. Thus, in such circumstances, the conviction and sentence awarded by the Courts below are not in accordance with law. They suffer from legality. Therefore, the conviction and the sentence must to go.

12. In view of the forgoings, this Criminal Revision is allowed. The conviction and sentence awarded to the revision petitioner in C.C.No.14 of 2009 on 18.09.2012 by the learned Judicial Magistrate, Vadipatti, which has been confirmed by the learned IV Additional Sessions Judge, Madurai in C.A.No.11 of 2013 on 08.12.2014 are set aside. The accused is found not guilty under Section 379 of IPC. He is acquitted. He shall be released from jail forthwith, if he is no longer required in connection with any other case or proceedings.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. IV Additional District Sessions Judge, Madurai.
2. District Munsif cum Judicial Magistrate, Vadipatti
3. The Superintendent, Central Prison, Madurai
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai
5. The Sub-Inspector of Police, Vadipatti Police Station
6. The Principal District Judge, Madurai
7. The Judicial Magistrate, Vadipatti
8. The Chief Judicial Magistrate, Madurai
9. The District Collector, Madurai
10. The Director General of Police, Mylapore, Chennai

+1cc to Mr.S.Mahendrapathy, Advocate Sr.No.28135