

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 03.04.2017

PRONOUNCED ON : 01.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE B.GOKULDAS
Crl.RC.No.1394 of 2011

Arumugam @ Surya

... Petitioner

Vs.

State rep by
The Station House Officer,
Karaikal Town Police Station,
Karaikal, Puducherry.
Cr.No.165 of 2009.

.... Respondent

PRAYER : Petition filed under Section 397 r/w.401 Cr.PC, to set aside the judgment passed by the learned Additional Sessions Judge, Karaikal in Crl.A.No.8 of 2011 dated 07.09.2011 confirming the conviction and sentence imposed by the learned Judicial Magistrate No.II, Karaikal made in CC.No.232 of 2010 dated 28.09.2010.

For Petitioners : Mr.R.K.Ayyappan.

For respondents : Mr.Thangavel, GA (Crl.side) (Pondy)

ORDER

This Criminal revision is filed to set aside the judgment passed by the learned Additional Sessions Judge, Karaikal in Crl.A.No.8 of 2011 dated 07.09.2011 confirming the conviction and sentence imposed by the learned Judicial Magistrate No.II in CC.No.232 of 2010 dated 28.09.2010.

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

On 27.06.2009 around 11.00pm when the complainant was sleeping in his fruit shop, on hearing some noise, he woke up and found that the cash drawer was broken and a sum of Rs.780/-

was found missing. At the same time, he saw the accused running from the spot and the complainant made an alarm and with the help of PW2 and PW3 the accused was caught red handed and handed over the accused to the police along with the cash of Rs.780/-. On receipt of the said information and the complaint, the Station House Officer, Karaikal Police Station reduced the complaint into FIR in Cr.No.165/2009 for the offence under Section 380 IPC and seized a sum of Rs.780/- under Form-95 in the presence of witnesses PW2 and PW3 and arrested the accused and sent him to judicial custody.

3. During the course of trial, the trial Court examined PW1 to PW4 and marked Exs.P1 to P5 and marked MO1 series. The trial Court after considering the evidences adduced on both sides convicted the accused for the guilty under Section 380 IPC and convicted him to undergo two years rigorous imprisonment with a fine of Rs.3,000/- in default to undergo rigorous imprisonment for six months. Aggrieved against the said order, the petitioner/accused preferred an appeal before the lower appellate Court in Crl.A.No.8 of 2011 on the file of Additional Sessions Judge, Karaikal, the lower appellate Court after considering the entire documents and the evidences adduced on either sides, confirmed the order of the trial Court. Hence, the petitioner/accused is before this Court.

4. The learned counsel for the petitioner contended that the trial Court has not properly considered the evidences available on record to prove the prosecution case beyond reasonable doubts. The trial Court has not considered the fact that the material objects viz., hammer, broken lock and the wooden drawer were not seized by the prosecution which creates much doubt on the prosecution case. The appellate Court ought not to have convicted the petitioner without considering the fact that the defacto complainant in this case is a known person and there is previous enmity between the parties and the present case has been foisted. Both the courts below failed to consider the fact that the witnesses viz., PW1 to PW3 had not seen the occurrence and had not corroborated the evidence and had stated that on seeing the accused taking the money they made alarm. The occurrence had taken place near the VIP guest house wherein twenty four hours security was available and had miserably failed to investigate the same and to prove the prosecution case.

5. Per contra, the learned Government Advocate (crl. side) Puducherry submitted that after due consideration of the evidences and documents adduced on either side, the trial Court has come to the conclusion in convicting the accused for the

above said offences and the appellate Court has also confirmed the decision of the trial Court by reasoning that the accused has not made out any grounds to interfere with the decision of the trial Court.

6. Heard the rival submissions made on both sides and perused the available records.

7. The main contention put forth on the side of the petitioner is that the prosecution has not seized any weapons, though the complainant has stated that he himself handed over the weapons to PW4. PW2 in his evidence categorically deposed that no independent witnesses was cited and examined. The PW1 to PW3 are not the eyewitnesses and PW1 and PW2 are close relatives and the complaint was lodged due to the previous enmity between the parties. The prosecution failed to examine the watchman available in the guest house and the only witness who had seen the occurrence or had the occasion to know about it.

8. On perusal of the entire records and the judgments of the Courts below this Court finds that the evidence of PW1 and PW2 shows that they got up and saw the accused running from the place of occurrence and after catching him red handed with the help of PW3, the accused was handed over to police along with the theft amount of Rs.780/-. In the evidence deposed by PW3, it is categorically stated that upon hearing the noise he saw the accused running from the place of occurrence and after chasing him they caught hold of him and he further deposed that he saw PW1 and PW2 was catching the appellant herein and seized Rs.780/- from the accused. Thus, the independent witness/PW3 had corroborated the evidence of PW1 and PW2. The other contention in not examining the watchman in the guest house who had seen the occurrence or had the occasion to know about it. The guest house next to the place of occurrence has a compound wall and the watchman cannot be expected to be outside the guest house premises to have the knowledge about the occurrence. The complaint was lodged immediately after the occurrence and the accused along with the money was handed over to the police by the PW1 and the enquiry was also done on the same day itself.

9. Considering the facts and circumstances and the evidence available on record, this Court finds there are sufficient materials available on record to prove the guilt of the accused and the petitioner/accused has not made out any case in his favour. The trial Court and the lower appellate Court has rightly convicted the accused for the offence stated above and

there is no illegality, infirmity or perversity to interfere with the well considered decisions of the Courts below.

10. In the result, the criminal revision stands dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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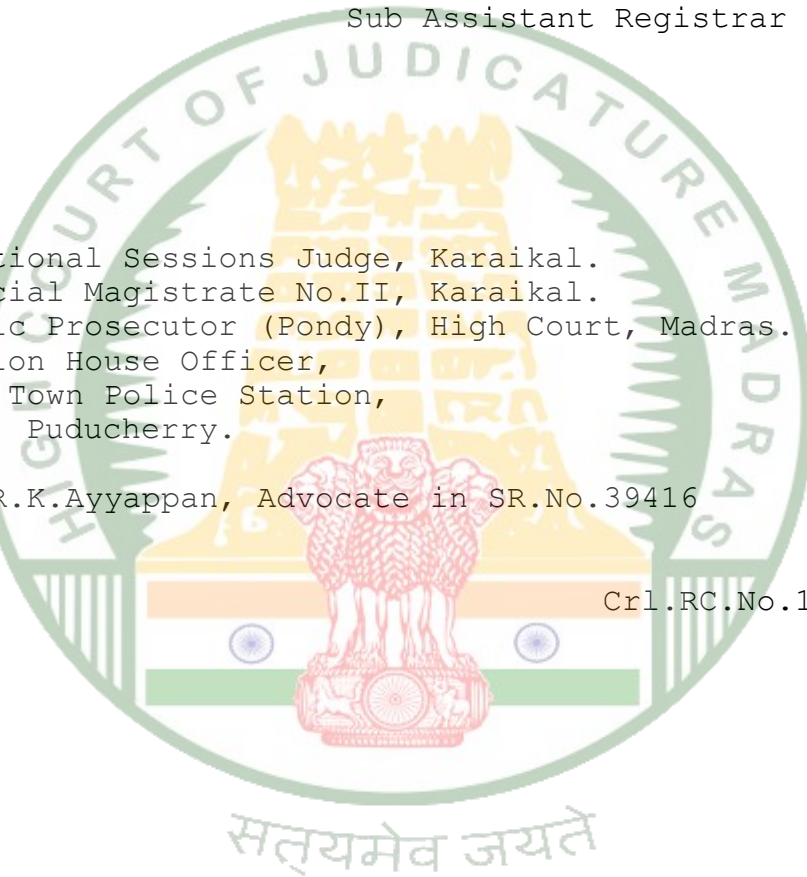
To

1. The Additional Sessions Judge, Karaikal.
2. The Judicial Magistrate No.II, Karaikal.
3. The Public Prosecutor (Pondy), High Court, Madras.
4. The Station House Officer,
Karaikal Town Police Station,
Karaikal, Puducherry.

+1cc to Mr.R.K.Ayyappan, Advocate in SR.No.39416

Cr1.RC.No.1394 of 2011

RR(CO)
CS/19/06/17



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