

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CrI.R.C.No.999 of 2011

and

M.P.Nos.1 and 2 of 2011

Siva @ Sivaraj

... Petitioner

...VS...

The State,
Rep. by Sub Inspector of Police,
B1 Police Station,
Coimbatore
(Cr.No.91/2004)

... Respondent

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure praying to set aside the Judgment of Principal District Session Judge, Coimbatore in C.A.No.25 of 2010 dated 07.06.2011 confirming the Judgment and sentence of the Judicial Magistrate No.5, Coimbatore in C.C.No.447 of 2004 dated 02.02.2009.

For Petitioner : Mr.P.R.Thiruneelakandan

For Respondent : Mr.V.Arul
Additional Public Prosecutor

O R D E R

This revision challenges the Judgment of Principal District Sessions Judge, Coimbatore, passed in C.A.No.25 of 2010 dated 07.06.2011 confirming the Judgment and sentence of the Judicial Magistrate No.5, Coimbatore in C.C.No.447 of 2004 dated 02.02.2009.

2. The prosecution case is that the petitioner, an employee of the TASMACH shop No.1712, broke into the same and did away with a sum of Rs.1,37,950/- which was kept in the cash box, on the night of 25.01.2004. A case in Crime No.91 of 2004 for offences punishable under Sections 457 and 380 I.P.C. on the file of the respondent was registered on 26.01.2004 and the petitioner was convicted for such offences and sentenced to undergo simple imprisonment for two years and fine of Rs.1,000/-

by the learned Judicial Magistrate No.V, Coimbatore, under Judgment dated 02.02.2009 in C.C.No.447 of 2004. The appeal in C.A.No.25 of 2010 was dismissed on 07.06.2011 and the conviction and sentence imposed by the trial Court was confirmed by the learned District Sessions Judge, Coimbatore.

3. Aggrieved against the findings of Courts below, this Criminal Revision has been filed.

4. Heard both sides.

5. Learned counsel for petitioner submitted that P.W.1- de-facto complainant was a supervisor of the TASMAL shop No.1712 and the case in Cr.No.91 of 2004 had been registered, on his complaint, Ex.P1. Therein, P.W.1 had informed only the presence of P.W.3-Vetrivel, when he closed the shop on 25.01.2004. P.W.1 had deposed to his being incharge of the shop and of being responsible for deposit of sale collections at the Bank. He had admitted to receipt of communication from higher officials calling for remittance of short deposits one month after the occurrence. He had admitted to not knowing the exact amount and to the key of the cash box being in his custody. P.W.1 had not named the accused who was a salesman, in Ex.P.1. P.W.2, another salesman had deposed that he was not aware that the petitioner had stolen the money. P.W.3 had deposed to P.W.9 being a close friend of P.W.1 and to P.W.9 frequenting the shop and regularly being present till P.W.1 closed the same. He also informed that P.W.9 had nothing to do with the business transactions of the shop. P.W.4, supervisor of the shop, examined to speak about the plan of the accused to commit the offence and his advising the accused thereagainst had turned hostile. P.W.5-Mahazar witness has also been treated hostile. P.W.7 who has been examined to speak of the accused being frequently visited by friends and his spending lavishly on them had turned hostile. P.W.8 examined towards speaking to suspicion regarding the involvement of the accused also had turned hostile. P.W.9, friend of P.W.1, though put up as an independent witness, had contradicted P.W.1 in that while P.W.1 had disclosed the presence of P.W.3 when he closed the shop on the fateful day, P.W.9 sought to implicate the petitioner by imputing his presence at such time. P.W.10, P.W.11 are hearsay witness. P.W.12 and P.W.14 are the Village Assistant and Village Administrative officer in whose presence the stolen sum of Rs.1,37,000/- alleged was recovered. While P.W.12 has deposed that he was called over phone by the police, it is the version of P.W.14 - Village Administrative Office that he came to the scene of occurrence on being informed by the public. Learned counsel for petitioner submitted that P.W.14, admitted to the presence of members of the public at the scene of recovery, but none was called to witness the same. P.W.15,

examined to speak to his making a duplicate key to the cash box at the instance of the accused had denied knowledge of the accused and had been treated hostile. Learned counsel for petitioner submits that the petitioner has been falsely implicated and Courts below erred in finding him guilty.

6. Learned Additional Public Prosecutor submits that a sum of Rs.1,37,000/- was recovered at the hands of the accused as spoken to by P.W.12 and 14 and that the Courts below are right in convicting the accused.

7. Considered the rival submissions.

8. P.W.14 - Village Administrative Officer and P.W.12 - the menial though variant on how they reached the scene are uniform in informing the presence of several persons at the scene. No such independent person has been examined. The attendant scenario presents a most weak prosecution case and the same falls to the ground in its entirety when the evidence of P.W.2 to the effect that immediately upon knowledge of the occurrence and on P.W.1 questioning him and P.W.3, they have informed that it was the accused who totally was in charge of the shop and further that the accused admitted to being responsible, undertaking to repay monies. When P.W.1 informed intent to give a complaint the accused had pleaded that his younger sister's marriage was in the offing. If this version of P.W.2 is true, P.W.1 would be guilty of offence under Section 201 I.P.C. On the other hand, if the prosecution case is in keeping with the complaint Ex.P.1, there is very little reliable material that would justify a conviction.

9. In the result, this Criminal Revision Petition is allowed. No costs. The Judgment of learned Principal District Session Judge, Coimbatore in C.A.No.25 of 2010 dated 07.06.2011, confirming the judgment and sentence of the Judicial Magistrate No.5, Coimbatore in C.C.No.447 of 2004 dated 02.02.2009 is set aside and the accused is acquitted of all the charges. Fine amount paid shall be refunded. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

arr/sj

To

1. The Judicial Magistrate No.5, Coimbatore
2. Do thro the Chief Judicial Magistrate.
3. The Principal District Session Judge, Coimbatore
4. The Sub Inspector of Police
B1 Police Station, Coimbatore.
- 5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.R.THIRUNEELAKANDAN, Advocate, S.R.No. 66683

Cr1.R.C.No.999 of 2011

MG(CO)
TR(04/06/2018)



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