



Bail Slip

Appellant/Accused No.2 viz C.Manikandan was released on bail as the order of this Court dated 12.04.2017 and made in CrI.M.P (MD).No.464 of 2017 in CrI.A(MD).No.14/2017.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on	07.02.2018
Orders Pronounced on	14.02.2018

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

CrI.A.(MD) No.14 of 2017

C.Manikandan

... Appellant/A2

-vs-

The Deputy Superintendent of Police,
Kulithalai Sub Division,
Kulithalai, Karur District.

... Respondent/Complainant

Prayer: Appeal filed under Section 372 of the Code of Criminal Procedure praying to set aside the judgment of the learned Fast Track Mahila Judge, Karur dated 08.12.2016 in Spl.S.C.No.7 of 2015 imposing 3 years rigorous imprisonment for the offence under Section 414 IPC and allow the appeal and acquit appellant.

For Appellant : Mr.S.Muthu Krishnan

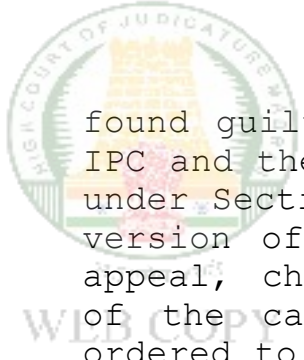
For Respondent : Mr.C.Ramesh
Addl. Public Prosecutor

J U D G M E N T**T.KRISHNAVALLI, J.**

The Fast Track Mahila Court, Karur, by the judgment dated 08.12.2016 in Special S.C.No.7 of 2015 found the second accused therein guilty under Section 414 of IPC and imposed punishment of three years Rigorous Imprisonment. Challenging the same, this appeal is filed by the second accused / appellant herein.

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2. So far as the first accused is concerned, he has been



found guilty under Sections 364, 394 r/w 397, 302 and 376 (2) (m) IPC and the maximum sentence of life imprisonment has been imposed under Section 302 IPC. It is relevant to point out that as per the version of the prosecution, the first accused has not filed any appeal, challenging the conviction and sentence. While disposing of the case, M.O.1, the gold ear ring with Jimikki has been ordered to be permanently in the custody of PW1, the father of the victim girl Ponnusamy.

3. Alleging that this was the article, which was pledged (disposed of) by the appellant with the knowledge that it is the stolen property, charges have been levelled against the appellant and the consequential conviction is under challenge.

4. Learned counsel for the appellant would submit that there is no evidence implicating the appellant towards assisting the first accused in the disposal of stolen articles. It is specifically pointed out that the evidence of Investigating Officer / attesting witness with reference to the confession of the appellant and the recovery of MO1 is highly doubtful, unbelievable and unreliable and therefore, the conviction under Section 414 IPC is unsustainable. In order to appreciate the contention raised, the main ingredients required to sustain the conviction under Section 414 of IPC has to be critically seen.

5. In order to bring home the offence under Section 414 IPC, the prosecution is required to prove,

a) that **the property involved in the offence is a stolen property** as understood under Section 410 IPC.

b) that the accused assisted someone in **concealing or disposing or making away with such property**.

c) that the accused assisted in such activity as stated supra in (b) **voluntarily**.

d) that the accused had the **knowledge or reason** to believe that the property involved was a stolen property.

6. The point for consideration, is whether the evidence adduced by the prosecution satisfied all the four necessary ingredients of Section 414 IPC.

7. The prosecution relies upon the evidence of the Investigating Officer who has spoken about the confession of the first accused and the appellant leading to recovery of the M.O.1 from the shop of Muthazhagu Finance, which has issued receipt in

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favour of the appellant.

8. The identity of M.O.1 by P.W1 and the ownership of M.O.1, which was allegedly with the deceased is not under dispute. The Trial Court has ordered return of M.O.1 to P.W.1, who is the father of the deceased and who has also identified the property in the Court.

9. According to the prosecution, there is an evidence of P.W21 / Manager of Muthazhagu Finance, who has deposed that it is the appellant, who pledged the jewels in their shop, which would go to show that the appellant assisted in the disposal of property, namely, M.O.1. The receipt issued by Muthazhagu Finance disclose that a sum of Rs.7,800/- has been paid and the receipt stands in the name of the appellant, allegedly bearing the signature of the appellant. Ledger has been filed in support of the receipt issued. Strangely, the ledger do not contain the name of the financial institution and it also discloses that the accounts of the institution has not been subjected to any audit. It is also an admitted fact that the appriser report is also not filed. Despite these deficiencies, still the question considered was whether the disposal of property was voluntary and it was with the knowledge that M.O.1 could have been a stolen property.

10. The prosecution relies upon the evidence of P.W30 / Revenue Inspector, who has signed in the confession statements of A1 and appellant and also the recovery mahazars. According to the evidence of P.W30, the first accused identified Manikandan and the admissible portion of the confession has been marked as Ex.P.21. According to him, the appellant identified the financial institution, namely, Muthazhagu Finance and as agreed to by him, he produced the receipt issued by the financial institution. The admissible portion in the confession has been marked as Ex.P23.

11. The question is, whether the admissible portion in the confession statement of A1 and that of the appellant has proved that the appellant voluntarily assisted the first accused in the disposal of property with the knowledge that M.O.1 is a stolen property.

12. The learned counsel for the appellant would point out the admissible portion of the confession statement Ex.P23 and would contend that assuming that the statement is voluntary and true, even then no offence is made out as against the appellant. The admissible portion reads that the accused has stated that he would hand over the receipt issued by Muthazhagu Finance and based on the receipt, he would get back M.O.1 also to produce it before the Police. It is pointed out this portion of evidence would not show that the pledging has been done with the knowledge that M.O.1 is the stolen property.



13. Perusal of Ex.P21 / the admissible portion in the confession statement of the first accused would disclose that the first accused has stated that he would identify Manikandan and also the shop in which the property was pledged apart from M.O.1.

14. The evidence adduced by P.W21 would disclose that the jewels have been identified only by the appellant and not by both of them together. Therefore, even by remote chance, Court cannot infer that the appellant pledged the jewels knowing fully well that it could have been a stolen property. If it is the case of prosecution that both of them came and at that time, the appellant pledged the jewels, one can at least remotely infer that the presence of first accused himself would have given some clue to the appellant regarding the circumstances under which M.O.1 is pledged. The possibility of the first accused, having sought the assistance of the appellant with the dishonest intention of escaping himself from the clutches of law, cannot be ruled out. Under such circumstances, no knowledge can be imputed to the appellant without any material.

15. There is no iota of evidence to indicate that the appellant herein either assisted voluntarily or assisted with the knowledge that M.O.1 is the stolen property by his act of pledging.

16. Therefore, in the absence of essential ingredients of Section 414 IPC, having been established by the prosecution, the conviction and sentence imposed cannot be maintained and it is liable to be set aside.

17. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant by the learned Fast Track Mahila Court, Karur dated 08.12.2016 in Spl.S.C.No.7 of 2015 is set aside and the appellant is acquitted of the charge under Section 414 IPC. The bail bonds, if any executed by the appellant, shall stand cancelled and the fine amount, if any, paid by the appellant shall be refunded.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To:

1. The Fast Track Mahila Judge,

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



2. The Judicial Magistrate No.II,
Kuzhithalai.
3. Do- Thro'The Chief Judicial Magistrate,
Karur.
4. The District Collector,
Karur.
- 5.The Superintendent of Police, Karur.
6. The Superintendent,
Central Prison, Trichy.
7. The Director General of Police,
Mylapore, Chennai.
8. The Inspector Of Police,
Mayanoor Police Station, Karur District.
9. The Deputy Superintendent of Police,
Kulithalai Sub Division,
Kulithalai, Karur District.
10. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.S.Muthu Krishnan , Advocate in SR No. 48448

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AE/KKR/SAR2/23.02.2018/5P/12C

ORDER IN
Cr1.A. (MD) No.14 of 2017
14.02.2018