



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.(MD) No.432 of 2018

P.Kumudavalli ... Appellant/PW1/1st Informant

vs.

1.The Inspector of Police,
Dindigul Town South Police Station,
Dindigul.

Crime No.204 of 2003 ... Respondent/Respondent/
Complainant

2.Ramesh

3.Shantha ... Respondents/Appellants/
Accused Nos.1 and 2

PRAYER:- Criminal Appeal filed under Section 372 of the Code of Criminal Procedure, to call for the entire records pertaining to the judgment delivered by the Mahila Court, Dindigul, Dindigul District in C.A.No.116 of 2017 vide judgment dated 06.07.2018 and set aside the same and consequently confirm the judgment and conviction rendered by the learned Judicial Magistrate No.III, Dindigul, Dindigul District vide judgment dated 04.12.2017 in C.C.No.41 of 2004.

For Appellant : Mr.R.Anand

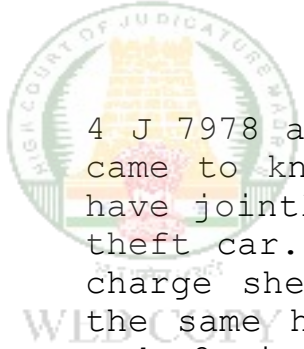
For R1 : Mr.APG.OHM.Chairma Prabhu
Government Advocate (Crl.Side)

For R2 & R3 : Mr.V.Kathirvelu senior counsel for
Mr.AN.Ramanathan

JUDGMENT

This criminal appeal has been filed to set aside the judgment dated 06.07.2018 passed in C.A.No.116 of 2017 by the learned Mahila Court Judge, Dindigul, Dindigul District.

2.The case of the prosecution is that originally A1 and A3 had approached the appellant to sell the Maruthi Car bearing Reg.No.KL



4 J 7978 and sold the same to the appellant. After some time, she came to know that the above said car is a theft car. A1 and A3 have jointly induced the appellant and her husband to purchase the theft car. Due to the same, the respondent police have filed the charge sheet for the offences under Sections 420 r/w 34 IPC and the same has been taken on file in C.C.No.41 of 2004 against A1 and A2 since A3 has been absconded.

3. In order to prove the case of the prosecution, on the side of the prosecution as many as 10 witnesses were examined and 7 documents were marked.

4. After completing the prosecution witnesses, incriminating circumstances culled out from the prosecution witnesses, put before the accused, the respondents 2 and 3 / A1 & A2 have denied the same as false. After hearing the arguments on either side, the learned Magistrate convicted A1 and A2 for the offences under Sections 420 r/w 34 IPC and sentenced to undergo simple imprisonment for a period of one year each and to pay a fine of Rs.1,000/- each in default, simple imprisonment for a period of 1 week, against which, the respondents 2 and 3 herein have filed an appeal before the learned Principal Sessions Judge, Dindigul in CA.No.116 of 2017. The learned Sessions Judge, Dindigul made over the appeal to the learned Judge, Mahila Court, Dindigul for disposal.

5. After considering the entire facts and revisited the oral and documentary evidence, the appellate Court acquitted the respondents 2 and 3 / A1 and A2 from all the charges on 06.07.2018. Feeling aggrieved against the judgment dated 06.07.2018, the appellant has filed an appeal before this Court.

6. The learned counsel for the appellant would submit that the respondents 2 and 3 are the husband and wife and they have introduced A3, who is involved in C.C.No.51 of 2008 to the appellant. In fact, they have induced the appellant to purchase the above said theft car. In the chief examination, the appellant has clearly stated about the information of the respondents 2 and 3 that A3 is the owner of the said theft vehicle. Therefore, they have committed the said offence. At the time of A3 asking the car for fixing A/C for security purpose, the vehicle was seized by the police of Kerala and due to the same, the appellant came to know that the car is a theft one. A1 and A2 have jointly induced the appellant and her husband to purchase the theft car through A3. Therefore, the learned Magistrate, rightly found the accused have committed the offence and convicted them, which does not warrant interference of this Court.

7. The learned counsel for the respondents 2 and 3 would submit that the respondents 2 and 3 were not aware when A-3 sold the car



to the appellant and there was no material to show that A1 and A2 have jointly induced and canvassed the appellant and her husband to purchase the theft car through A3 and they have committed the offence with an intention. Though the learned Magistrate found the respondents 1 and 2 have committed the offence, whereas, the learned Magistrate failed to appreciate the evidence of P.W1, the appellate Court has rightly considered the entire facts, which does not warrant interference of this Court.

8. Heard the learned counsel on either side and the perused the records.

9. On reading of the entire materials and also the evidence, it is seen that the respondents 1 and 2 have introduced A3 to the appellant and her husband and all the accused are the Malayalis and they lived in Tamil Nadu for a long time and it is seen that the appellant had agreed to purchase the car and they have entered into the agreement, A1 is the scribe of the agreement.

10. On reading of the agreement, it is seen that the appellant had purchased the car and the car has been handed over to her and also the name has been transferred in favour of her and the appellant is in possession of the vehicle and she used the car for more than 7 months. After 7 months of the purchasing of the car, the respondents 2 and 3 along with A3 came and asked the appellant to fit the A/C in the car, for which, the appellant handed over the car to A3. Later, she came to know that the car has been taken to the place of A3 and the same was a theft car and the car has been trapped by the police of Kerala.

11. From the evidence of prosecution witnesses, it is seen that no material to show that the respondents 2 and 3 were aware of the fact that at the time of approaching the appellant to purchase the car, the car is a theft one and the case has also been pending. In the absence of any specific proof, it is unsafe to convict the respondents 2 and 3. When two views are possible, the view, which is in favour of the accused can be taken into consideration. Therefore, the benefit of doubt to be extended to the accused.

12. Under these circumstances, in this case since A3 is absconding, there is no specific proof to show that the respondents cheated the appellant with an intention. Though the trial Court has convicted the accused, the appellate Court had acquitted them and this Court finds that the appellate Court has rightly extended the benefit of doubt to the accused and this Court does not find any valid and sound reason to interfere with the judgment of the appellate Court.

13. Under these circumstances, there is no merit in this criminal appeal and the appeal is dismissed. The judgment dated



06.07.2018 passed in C.A.No.116 of 2017 by the learned Mahila Court Judge, Dindigul, Dindigul District, is hereby confirmed.

Sd/-

Assistant Registrar (AE)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Sessions Judge,
Mahila Court,
Dindigul.
2. The Judicial Magistrate No.III,
Dindigul.
3. Do Thro'The Chief Judicial Magistrate,
Dindigul.
4. The Inspector of Police,
Dindigul Town South Police Station,
Dindigul.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to Mr.R.ANAND, Advocate (SR-1620[D] dated 06/02/2019)

Cr1.A.(MD) No.432 of 2018
07.12.2018

MS/29.05.2019/4P/9C