

BAIL SLIP

The Petitioner/Accused Ezhumalai, aged 33 years S/o.Mayakannan was directed to be released on bail as per the order of this Court dated 29.03.2012 in
Crl.M.P.Nos. 1/12 in Crl.Rc.No. 127/12, MP.No.1/12 in
Crl.RC.No. 127 of 2012, MP.No. 1/12 in
Crl.RC.No. 128 of 2012, MP.No. 1/12 in
Crl.RC.No. 130 of 2012, MP.No. 1/12 in
Crl.RC.No. 131 of 2012, MP.No. 1/12 in
Crl.RC.No. 132 of 2012, MP.No. 1/12 Respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.03.2019

PRONOUNCED ON : 26.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case Nos.127, 128, 130, 131 and 132 of 2012

Ezhumalai .. Petitioner in all Crl.R.Cs

Vs

State Rep. by,
Sub - Inspector of Police,
Hudco Police Station,
Hosur,
Krishnagiri District
(Crime No.199/2005)

.. Respondent in
Crl.R.C.No.127/2012

State Rep. by,
Sub - Inspector of Police,
Mathigiri Police Station,
Krishnagiri District
(Crime No.120/2006)

.. Respondent in
Crl.R.C.No.128/2012

State Rep. by,
Sub - Inspector of Police,
Mathigiri Police Station,
Krishnagiri District
(Crime No.26/2006)

..Respondent in Crl.R.C.No.130/2012

State Rep. by,
Sub - Inspector of Police,
SIPCOT Police Station,
Hosur Town, Krishnagiri District
(Crime No.190/2006)

..Respondent in Crl.R.C.No.131/2012

State Rep. by,
Sub - Inspector of Police,
Hosur Town Police Station,
Krishnagiri District
(Crime No.447/2006)

..

Respondent in
Crl.R.C.No.132/2012

Prayer in Crl.R.C.No.127/2012:- This Criminal Revision is filed under Sections 397 and 401 of Cr.P.C., against the order of the learned Additional Sessions Judge, Krishnagiri in Criminal Appeal No.64 of 2008 dated 09.03.2011 by confirming the conviction order passed by the learned Judicial Magistrate No.II, Hosur in C.C.No.59 of 2007 dated 19.08.2008.

Prayer in Crl.R.C.No.128/2012:- This Criminal Revision is filed under Sections 397 and 401 of Cr.P.C., against the order of the learned Additional Sessions Judge, Krishnagiri in Criminal Appeal No.66 of 2008 dated 07.06.2011 by confirming the conviction order passed by the learned Judicial Magistrate No.II, Hosur in C.C.No.439 of 2006 dated 19.09.2008.

Prayer in Crl.R.C.No.130/2012:- This Criminal Revision is filed under Sections 397 and 401 of Cr.P.C., against the order of the learned Additional Sessions Judge, Krishnagiri in Criminal Appeal No.65 of 2008 dated 28.04.2011 by confirming the conviction order passed by the learned Judicial Magistrate No.II, Hosur in C.C.No.404 of 2006 dated 19.08.2008.

Prayer in Crl.R.C.No.131/2012:- This Criminal Revision is filed under Sections 397 and 401 of Cr.P.C., against the order of the learned Additional Sessions Judge, Krishnagiri in Criminal Appeal No.67 of 2008 dated 07.03.2011 by confirming the conviction order passed by the learned Judicial Magistrate No.II, Hosur in C.C.No.352 of 2006 dated 19.08.2008.

Prayer in Crl.R.C.No.132/2012:- This Criminal Revision is filed under Sections 397 and 401 of Cr.P.C., against the order of the learned Additional Sessions Judge, Krishnagiri in Criminal Appeal No.63 of 2008 dated 07.01.2011 by confirming the conviction order passed by the learned Judicial Magistrate No.II, Hosur in C.C.No.362 of 2006 dated 19.08.2008.

For Petitioner in
all Crl.R.Cs : Mr.E.P.Senniyangiri

For Respondent in : Mr.Shunmuga Rajeswaran.T
all Crl.R.Cs Government Advocate (crl.side)

COMMON ORDER

The above five Criminal Revisions are preferred by Elumalai, who was arrayed as accused and have been tried in five Criminal Cases based on the seizure following his confession to one Kannappan, Inspector of Police, attached to Hosur SIPCOT Police Station on 07.08.2006.

2.The confession and recovery of material objects were related to several cases pending unsolved at various police stations within the District of Krishnagiri. After recovery of the stolen articles, individual cases have been investigated by the respective Police Stations in the respective Crime Numbers and final reports have been filed by the respective Investigating Officers.

3.The trial has also been conducted separately in all cases. The trial Court has held in all the five cases the accused guilty, which are the subject matter of the present Criminal Revisions. For the sake of brevity, the details of the cases are given below:-

Sl No	C.C.No.	Conviction	Sentence
1	59/2006	Section 457 (ii) I.P.C.,	12 months rigorous imprisonment, fine of Rs.250/- in default to undergo one month rigorous imprisonment.
2	439/2006	Section 380 I.P.C.,	12 months rigorous imprisonment, fine of Rs.500/- in default to undergo one month rigorous imprisonment.
3	404/2006	Section 380 I.P.C.,	12 months rigorous imprisonment, fine of Rs.200/- in default to undergo one month rigorous imprisonment.
4	352/2006	Section 379 I.P.C.,	12 months rigorous imprisonment, fine of Rs.500/- in default to undergo one month rigorous imprisonment.

Sl No	C.C.No.	Conviction	Sentence
5	362/2006	Section 380 I.P.C.,	12 months rigorous imprisonment, fine of Rs.500/- in default to undergo one month rigorous imprisonment.

4.The trial Court ordered the above sentences to run concurrently.

The Appeals preferred by the accused/revision petitioner against the above five Calendar Cases before the learned Additional Sessions Judge, Krishnagiri were dismissed. Hence, present Criminal Revisions are filed before this Court.

5.Though, the trial of the above cases were conducted separately and judgments were rendered by the trial Court as well as First Appellate Court individually, since, the accused is common and three of the key witnesses in all the cases are one and the same, considering the nature of the charges and the evidence, it is necessary for this Court to pass a common order. Hence, the following common order is passed.

6.On 07.08.2006, at about 4.00 am, Kannappan - the Inspector of Police attached to SIPCOT Police Station, Hosur, Krishnagiri District, on suspicion, interrogated one Elumalai (revision petitioner herein) near Guruvadi Global Company in the presence of Govindaraj and Ranganathan. The revision petitioner/accused gave a confession statement admitting his involvement in several cases of house breaking, theft and chain snatching. Based on the information given by Elumalai in his confession statement, Kannappan, the Inspector of Police along with Govindarajan and Ranganathan had gone to Thalaiyuthur Village, Chengam Taluk, Tiruvannamalai District, conducted house search of one Swaminathan who claims to be the Junior paternal uncle of revision petitioner/accused, for these stolen articles like camera, camera lens, watch, gold chain, gold ingot and cash were recovered under mahazar.

7.Govindarajan and Ranganathan are the witnesses for confession statement alleged to have been given by the accused/revision petitioner near Guruvadi Global Company, Hosur and for the recovery of material objects in the house of Swaminathan located at Thalaiyuthur Village, Chengam Taluk, Tiruvannamalai District. These three witnesses viz., Ranganathan, Govindaraj and Kannappan, the Inspector of Police are common in all the five cases besides, the persons who have lost their properties, the defacto complainants in each case and

witness for observation mahazar were examined as prosecution witnesses.

8.The Point canvassed before this Court by the learned counsel for the revision petitioner is that the Courts below have miserably failed to consider the inconsistency and contradictions in the evidence of Govindarajan, Ranganathan and Kannappan. The delay in lodging the F.I.R., vagueness in the complaint in the respective cases, the unreliability of the witnesses for the confession and recovery of material objects, put together, improbabilises the case of the prosecution however, the Courts below have totally ignored to appreciate the evidence in proper perspective and erred in convicting the revision petitioner/accused.

9.The learned counsel for the accused/revision petitioner to buttress his case would point out that the self contradiction in the deposition of Govindaraj who has been examined as one of the witness in all the five cases and the self contradiction of Ranganathan who has been witness in all the cases vis-a-vis contradiction between the testimony of Govindaraj and Ranganathan in same case as well as in the other cases.

10.The learned counsel would submit that according to the case of the prosecution, it was on 07.08.2006 at about 4.00 am, the accused was interrogated by Kannappan, the Inspector of Police attached to SIPCOT Police Station, Hosur, Krishnagiri District which was witnessed by Govindaraj and Ranganathan. During that interrogation, it is alleged that Elumalai/accused confessed his involvement in the five cases, for which, he was subjected to trial in five cases. If so, there cannot be any inconsistency or contradictions between the witnesses. Whereas, plain reading of their depositions in each of the cases, contains bundle of contradictions. By no stretch of imagination, it could be true and reliable. Pointing out the contradictions, the learned counsel would submit that the judgments of the Courts below are perverse and illegal since, the contradictions in the prosecution case never been considered.

11.Per contra, the learned Government Advocate (crl.side) submitted that the revision petitioner, an habitual offender was caught by Kannappan - the Inspector of Police, on suspicion, on 07.08.2006 at 4.00 am. The interrogation revealed that, he was involved in several cases of theft and house breaking in and around the Krishnagiri District. Confession was drawn in the presence of independent witnesses and recovery was effected based on the confession.

12.Govindaraj and Ranganathan who are independent witnesses. They both are reliable and trust worthy. The

recovery, based on the confession, is corroborated by the witnesses. The theft of properties is spoken by the respective victims. The subsequent recovery from the accused and the identification of the same by the persons who have lost the properties were leads to the presumption that the revision petitioner is the accused since, the stolen properties have been recovered from him. Therefore, the learned Government Advocate (Crl.Side) would submit that the minor contradictions in the evidence of Govindaraj and Ranganathan who were subjected to examination and cross examination on several occasions from each and every case cannot be the reason to disbelieve their testimony.

13. The brief facts of each case and the contradictions are culled out below:-

Crl.R.C.No.127 of 2012:-

On 20.08.2005, at night hours, the house of Venkataraman (P.W.4), when he was not at station was broke open. Eight sovereign gold chainworth Rs.32,000/- was stolen from his house situated at D.No.4/5, 30, Vinayagapuram 4th Block, Hosur. Burglary came to the notice on the next day, by the neighbours. The house owner informed Venkataraman about the theft. He in turn informed his friend Sridhar and others to go to his house and find the facts. Accordingly, Sridhar went to the house of P.W.4 saw the house was broke open and the bureau was opened and the things in the bureau were thrown on the floor. Hence, P.W.1 - Sridhar reported the matter to the Police. His complaint - Ex.P.1 was taken on file for investigation. The said incident was witnessed by P.W.2 - Munirathnam and P.W.3 - Rajaram who are friend and colleague of P.W.4. P.W.6 is the Sub Inspector of Police attached to HUDCO Police Station, who registered the complaint under Sections 457 and 380 I.P.C. The F.I.R - Ex.P.5 and the sketch prepared by him is Ex.P.6. After registration of F.I.R., on 21.08.2005, in the course of investigation on 07.08.2006 the accused Elumalai was arrested. He confessed his guilt of house breaking and theft in the house of Venkataraman.

14. Kannappan, the Inspector of Police attached to SIPCOT Police Station has deposed that on 07.08.2006, at about 4.00 am in the morning near Guruvadi Global Company, he enquired Elumalai and recorded his confession statement in the presence of Govindaraj (P.W.5) and Ranganathan (P.W.7). He has gone to Thalaiyuthu Village, Chengam Taluk, Tiruvannamalai District searched the house of Swaminathan, who is the Junior paternal uncle of Elumalai. There he recovered 63 grams of gold ingot under mahazar.

15. In this case, P.W.5, one of the witness to the

confession and also the recovery has turned hostile. The other witness Ranganathan has identified the gold ingot recovered as M.O.1 and the recovery of mahazar signed by him as Ex.P.8. In this case, P.W.5, Govindaraj has said that while he was walking near Guruvadi Global company in SIPCOT, on 07.08.2006, at about 4.00 am, in the morning, he saw Kannappan, the Inspector of Police enquiring the accused, so, he went there and enquired the Inspector. Then, he came to know that the accused has stolen at various places. So, he accompanied the Inspector to Thalaiyuthu Village, Chengam Taluk, Tiruvannamalai District, where the accused went to the house of his Junior paternal uncle - Swaminathan and took gold chain and handed over the same to the Inspector which was recovered under mahazar. The said witness has said that he signed in the mahazar before him and confession statement at police station and hence, he was treated as hostile in this case.

16.The other witness Ranganathan has deposed that on 07.08.2006 at about 4,00 pm, in the evening he saw the Inspector of Police enquired the accused and along with P.W.5, he signed in the documents. He saw the accused taking a gold chain from his pocket and handing over it to the Inspector. Thereafter, he along with P.W.5 and Kannappan, the Inspector of Police went to Thalaiyuthu Village, Chengam Taluk, Tiruvannamalai District, where the accused handed over 62 grams of gold ingot.

17.In the cross examination, Ranganathan has stated that they reached Tiruvannamalai at about 10.30 pm. He has said that he was present at Guruvadi Global Company on 07.08.2006 at about 4.00 pm to give complaint.

18.While the case of the prosecution is that on 07.08.2006, at about 4.00 am, the accused was interrogated by Kannappan, the Inspector of Police, near Guruvadi Global Company at SIPCOT, out of the two witnesses who were examined to corroborate the statement of Kannappan, the Inspector of Police, one has turned hostile and another witness has said that he saw Kannappan, the Inspector of Police interrogating the accused at 4.00 pm in the evening and they all went to Thalaiyuthu Village, Chengam Taluk, Tiruvannamalai District and reached at about 10.30 pm. This contradiction between the evidence of Govindarajan - P.W.5 and Ranganathan - P.W.7 and Kannappan - P.W.8, the Inspector of Police regarding the confession statement and seizure of material objects pursuant to the confession statement given by the accused not been considered at all by the Courts below.

19.Cr1.R.C.No.128 of 2012

On 03.08.2006, in the early hours, at about 2.30 am, when Mahendra Kumar was sleeping in his bed room keeping the window

open, his 1 ½ sovereign gold chain was snatched. He gave a complaint to the Police about the incident and the matter was taken up by the Mathigiri Police Station in Crime No.120/2006. The said complaint was given on 04.08.2006 at 5.30 pm. The evidence of P.W.1 regarding the chain snatch and the complaint is corroborated by the evidence of his neighbours viz., P.Ws.2 to 4 who came out from their houses, on that night, on hearing the commotion.

20.P.Ws.6 and 7 - Singaravelan and Viswanathan are the witnesses to the observation mahazar. Singaravelan - P.W. 6 has deposed that when he went to the spot, the mahazar was already written and he was asked to sign by the Police. P.W.8 - Govindaraj; P.W.9 - Ranganathan and P.W.11 - Kannappan are the common witnesses.

21.P.W.8 - Govindaraj, in his chief examination has stated that, on 07.08.2006, at about 4.00 pm, he along with his Cousin Ranganathan (P.W.9), were passing through Guruvadi Global Company to enquire about his complaint. He saw the Inspector of Police - P.W.11 Kannappan enquiring the accused, Elumalai.

22.The accused gave a confession statement admitting his guilt committing theft at various places. The admission portion of the confession is marked as Ex.P.4. The signature of P.W.8 - Govindaraj is marked as Ex.P.5. He has further deposed that he along with P.W.9 - Ranganathan and P.W.11 - Kannappan went to Thalaiyuthu Village, Chengam Taluk, Tiruvannamalai District. From the house of Swaminathan, the accused took four sovereigns of gold chain, camera, camera lens, watch, silver anklet and 1 ½ sovereign gold jewel. The same were recovered under mahazar. In the cross examination, he admits that he is not aware from where, the material objects were recovered and he admits that his signatures found in the mahazar was signed by him in the Police Station. P.W.9 Ranganathan Cousin of P.W.8, in his chief examination has stated that, on 07.08.2006, at about 4.00 am, he and his Cousin P.W.8 were going to SIPCOT Police Station to give complaint about the theft of jewel occurred at P.W.8 house. At that time, they saw Kannappan, the Inspector of Police attached to SPICOT Police Station enquiring the accused. In the cross examination, he admits that he does not know to read and write Tamil. He also admits that he did not see, from which place, the accused took the material objects in the house of Swaminathan.

23.P.W.11 - Kannappan has deposed that, at about 11.30 am, on 07.08.2004, he in the presence of witnesses P.Ws.8 & 9, recovered a gold chain under mahazar Ex. P.12. In this case, a gold chain is marked as through P.W.1. He has identified it is the chain which he lost on 03.08.2006 mid night. Though, P.W.1

would say about the recovery of the said chain, the witnesses to the recovery, Govindaraj admits that he has signed the mahazar in the police station. P.W.9 - Ranganathan admits that he does not know read or write Tamil but, he has signed the mahazar written in Tamil since, the Police has asked him to sign.

24.CrI.R.C.No.130 of 2012

On 18.02.2006 at about 8.00 pm, Krishnareddy and his wife Shaila, when returned back from their field found their house break open and the bureau opened. On checking the articles, they found Rs.5,000/- missing therefore, they gave a complaint - Ex. P.1 on the next day to Mathigiri Police Station which was taken on file in Crime No.26/2006.

25.The incident of theft is spoken by P.W.1 - Krishnareddy who is also the defacto complainant. His wife as P.W.2 and the neighbour Badraredddy as P.W.3 were examined. On receipt of the complaint, P.W.8 - Abdul Munap has registered F.I.R., for offence under Section 380 I.P.C. The F.I.R., is marked as Ex.P.9. He went to the spot and prepared observation mahazar and sketch which are marked as Exs.P.10 and P.11. The witnesses to observation mahazar examined as P.Ws.4 & 5 but they have turned hostile. In the first information report, the time of the complaint is left unfilled.

26.Govindaraj, Ranganathan and Kannappan, the common witnesses were examined as P.Ws.6,7, & 9 in this case. Govindaraj in this case has said that he was at Global company on 07.08.2006 at about 4.00 am along with Ranganathan to enquire about the theft complaint given by him earlier, he saw the accused giving confession to Kannappan, the Inspector of Police and at request of the Inspector of Police, he and his Cousins went along with Kannappan, the Inspector to Thalaiyuthu Village, Chengam Taluk, Tiruvannamalai District. The accused took four sovereigns of gold chain a camera, watch, anklet and 1 ½ sovereigns of gold jewel from the house of Swaminathan and handed over them to the Police.

27.P.W.7, Ranganathan has deposed that he and Govindaraj P.W.6, on 07.08.2006, at about 4.00 am, went to SIPCOT police station to give a complaint. They saw the Inspector of Police enquiring the accused. Thus, the place and purpose of their visit and meeting P.W.8 is again contradictory to each other and contrary to the earlier evidence in the other cases.

28.Regarding the recovery, P.W.7 would say that the accused took camera, gold chain four sovereigns, cell phone, a pair of earrings and Rs.4,000/- from the house of Swaminathan. In the cross examination, he admits that he did not accompany the accused inside the house and he is not aware that, in which

place, the material objects were recovered. He was sitting in the Jeep. He was not aware of the happening inside the house of Swaminathan.

29.P.W.9 - Kannappan, the Inspector of Police had deposed that the accused confess about his theft of Rs.5,000/- from a house in Kothur Village during the second week of February from out of Rs.5,000/- he has purchased a pair of earrings and kept the same in his junior paternal uncle Swaminathan house at Thalaiyuthu Village, Chengam Taluk, Tiruvannamalai District. He has deposed that, the house of Swaminathan, was under the custody of the accused. The accused had the key of the house. He opened the house and handed over the stolen articles to him. Neither P.W.6 nor P.W.7 Ranganathan had corroborated this version of Kannappan, the Inspector of Police.

30.Cr1.R.C.No.131 of 2012

On 02.08.2006, at about 3.00 pm, when Uma Kesavan P.W.1 kept his hand bag at SIPCOT bus stop and went to attend his nature's call, somebody lifted his bag containing camera, watch, anklet, total worth about Rs.40,000/-. On the same day, he gave a complaint - Ex.P.1 which was registered in Crime No.190 of 2006 for offence under Section 379 I.P.C., by Annapoorani, the Sub Inspector of Police, SIPCOT Police Station. The complaint - Ex.P.1 and the F.I.R., registered by P.W.8 is Ex.P.10. In the presence of P.W.3 - Venkatesan and P.W.4- Vijayakumar. P.W.8 prepared observation mahazar and sketch. The common witnesses, Govindaraj, Rangathan and Kannappan were examined as P.Ws.5, 6 and 7 respectively. Here again, P.W.5 Govindaraj says that they went to Guruvadi Global Company on 07.08.2006 at about 4.00 am, to enquire with Kannappan, the Inspector of Police regarding the complaint given by him earlier. Contrarily, P.W.6 Ranganathan has deposed that they went to the SIPCOT Police Station to give a complaint about the theft in the house of Govindaraj. Both P.Ws.5 & 6, admits that they did not go inside the house of Swaminathan, they did not know from where the accused took the material objects and handed over to Kannappan, the Inspector of Police.

31.In this case, Kannappan, the Inspector of Police who was examined as P.W.7 admits that the common witness Govindaraj is a complainant in SIPCOT Police Station in respect of Crime No.191 of 2006. Kannappan has deposed that the house in Thalaiyuthu Village, Chengam Taluk, Tiruvannamalai District was in possession of the accused and he had the key of the house, he opened it and took out the stolen articles from there and handed over to him. But he has not enquire either Swaminathan or any person in that locality. He has also not recovered the key of the house.

On 01.08.2006, Sagathyavani (P.W.2) w/o Jayaseelan P.W.1 were sleeping in their house near the window. Her Thali chain was snatched by an unknown person. Immediately, at about 3.15 am, Jayaseelan gave a complaint to Hosur Police Station which was taken on file as Crime No.447 of 2006 on the file of the Hosur Police Station for offence under Section 380 I.P.C., by Thirugami (P.W.8). He has gone to the spot, prepared sketch and observation mahazar in the presence of witnesses Viswanathan (P.W.5) and Kulsari (P.W.6). P.W.2 is the wife of P.W.1 who lost her Thali chain. P.Ws.3 and 4 are the neighbours who came out from their houses on hearing the commotion on the day. The common witnesses Govindaraj and Kannappan were examined as P.Ws.7 and 9 respectively.

33.In this case, P.W.7 Govindaraj has deposed that he was at Guruvadi Global Company along with his Cousin Ranganathan at about 4.30 am and he saw the police enquiring the accused. The accused confessed his guilt of committing theft in 17 places by lurking through the window. In the cross examination, he admits that he is the complainant in Crime No.191 of 2006 on the file of the SIPCOT Police Station. He also admits that he does not know to read or write Tamil and he can only talk in Tamil. He has deposed that he went along with P.W.9 - Kannappan, the accused/Elumalai and his Cousin Ranganathan (not examined) to Thalaiyuthu Village, Chengam Taluk, Tiruvannamalai District. The accused handed over the gold chain weighing 66 grams concealed in the said house which was recovered under the mahazar-Ex.P.5. He admits that the confession statement of the accused was written in the police station and all his signatures were made only in the Police Station.

34.In this case, Kannappan, the Inspector of Police had deposed that he went to Thalaiyuthu Village, Chengam Taluk, Tiruvannamalai District along with the other witnesses and the accused at about 9.00 am and recovered M.Os.1 to 5 under the mahazar and he has identified the material objects which has not been identified by the mahazar witness Govindaraj the other mahazar witness Ranganathan was not examined. In the cross examination, Kannappan asserts that Govindaraj know to read and write Tamil which is contrary to the deposition of Govindaraj.

35.Having pointed out certain specific internal contradictions in each case an over all appreciation of evidence let in by the prosecution, the fact proved through the witnesses is only the loss of property by the respective complainants. The complaints to the respective jurisdiction Police. When it come to proof of confession and recovery, the prosecution has

miserably failed the very presence of Govindaraj and Ranganathan on 07.08.2006 at 4.00 am early morning near Guruvadi Global Company. This claim itself is highly doubtful in view of the contradictory statements given by Govindaraj and Ranganathan. Further, the alleged confession statement which has led to recovery of incriminating material also have no evidentiary value. The claim of Kannappan, the Inspector of Police that Elumalai/the accused gave all details of the cases pending against him in his confession statement itself stands unbelievable. Kannappan had stated that on intercepting the accused in the Highways on the early hours on 07.08.2006 he interrogated and obtained a statement. To corroborate this confession, the prosecution has examined Govindaraj and Ranganathan. The common witnesses in all cases have said that they went to Police Station to enquire about their complaint given by Govindaraj. Govindaraj says that he along with his Cousin Ranganathan, went to Police station on 07.08.2006 at early morning 4.00 am to enquire about his complaint given on 04.08.2006. Whereas, Ranganathan would say that he along with his Cousin went to SIPCOT Police Station to lodge a complaint regarding the theft in the house of Govindaraj. From the evidence of other witness, it appears that Govindaraj is also one of the victim of theft and he had given a complaint on 04.08.2006 to the SIPCOT Police Station and the same was registered in Crime No.191 of 2006.

36.The alleged two grey area in the investigation which renders the entire investigation of trial a farce. The complainant in one of the case against the accused has been shown as one of the witness to the confession and recovery. In all the cases, the recovery which has alleged to have been taken place at Thalaiyuthu Village, Chengam Taluk, Tiruvannamalai District not been witnessed by any of the public in that locality. In one case, witness say that the search of that house was conducted at about 10.30 pm on that night. In other cases, it is varies from 11.00 am, 11.30 am and 9.00 am. There is no consistency about the time at which the actual search and recovery of the material objects were made at Thalaiyuthu Village, Chengam Taluk, Tiruvannamalai District. The prosecution has not even attempted to find out the owner of the house in which the stolen articles were recovered.

37.Kannappan, the Inspector of Police in the cross examination had said that the key of the house was in possession of the accused Elumalai. He opened the lock went inside the house took out the stolen properties concealed and handed over to him which was recovered under mahazar in the presence of Govindaraj and Ranganathan. Both Govindaraj and Ranganathan have consistently said that they did not go inside the house and they did not see the accused handing over the stolen articles to

Kannappan. Therefore, they cannot be construed as witnesses to the recovery of stolen articles. Even if one believe that they both were present at Thalaiyuthu Village, Chengam Taluk, Tiruvannamalai District, which itself a doubtful fact since, both the witness have not whispered about the time at which they reached Thalaiyuthu Village and when the recovery was done their testimony looks reliability.

38.The yet another factor in this case which exposes the shallowness in the investigation is admittedly Govindaraj and Ranganathan are not the residents of Guruvadi. It is only their temporary address. One of them, Govindaraj, is the complainant and victim of crime. He and his Cousin- Ranganathan were asked to be witnesses not only for confession statements but for recovery, which has happened several 100 kilometers away from the place of arrest of the accused. To add, they both have admitted that they are not capable of reading and writing Tamil. While so, even without ascertaining their acquaintance with the language, the Investigating Officer asked them to stand as witnesses, to the confession and as well as to the recovery of material objects for all the cases. The inconsistency and contradictions particularly, the confession statements and the recovery of material objects based on the confession when not proved in the manner known and shrouded with suspicion. Therefore, the conviction rendered by the trial Court and confirmed by the First Appellate Court cannot sustain.

39.The Courts below have miserably failed to test the reliability of these witnesses, in a conjoint manner. The recovery of material objects in all these cases which are alleged to have been made pursuant to the information given by the accused during interrogation has not been proved at all. It is unsafe to hold the revision petitioner/accused guilty based on the evidence of common witnesses, Govindaraj, Ranganathan and Kannappan. Whose evidence in isolate and comparison with others is more of contradiction and not corroborated with each other.

40.In the result, the Criminal Revisions are allowed and the judgments of conviction rendered by the trial Court and the First Appellate Court are set aside. The accused is set at liberty unless his presence is required with in connection with any other case. Fine amount, if any, paid shall be refunded to him.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Additional Sessions Judge,
Krishnagiri.

2.The Judicial Magistrate No.2,
Hosur.

3.The Chief Judicial Magistrate,
Krishnagiri (For Information)

4.The Superintendent,
Central Prison,
Vellore.

5.The Sub Inspector of Police,
Mathigiri Police Station,
Krishnagiri District.

6.The sub Inspector of Police,
Hosur Town Police Station,
Krishnagiri.

7.The Sub Inspector of Police,
Hudco Police Station,
Hosur, Krishnagiri District.

8.The Inspector of Police,
SIPCOT Police Station,
Hosur Town,
Krishnagiri District.

9.The Public Prosecutor,
High Court, Chennai.

Copy TO

The Criminal Section,
High Court, Madras.

+5cc to Mr. E.P.Senniyangiri, Advocate, S.R.No. 28878, 28879,
28880, 28881, 28882

Crl.R.C.Nos.127, 128, 130, 131
and 132 of 2012

BS(CO)
GN(03/05/2019)