

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.12.2019

PRONOUNCED ON : 05.12.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1279 of 2012

V.Chakrabani Petitioner/Accused

Vs

State rep. by Inspector of Police
P-7 Vellavedu Police Station
Tiruvallur District.
Crime No.102 of 2005

... Respondent/Complainant

Criminal Revision preferred under Section 397 and 401 Cr.P.C. to set aside the judgment and order dated 21.09.2012 passed by the II Additional District and Sessions Judge, Tiruvallur at Poonamallee in C.A.No.40 of 2012 confirming the judgment and order dated 07.05.2012 passed by the Judicial Magistrate No.II, Poonamallee in C.C.No.129 of 2005.

For Petitioner : Mr.S.Suresh

For Respondent: Mrs.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 21.09.2012 passed by the II Additional District and Sessions Judge, Tiruvallur at Poonamallee in C.A.No.40 of 2012 confirming the judgment and order dated 07.05.2012 passed by the Judicial Magistrate No.II, Poonamallee in C.C.No.129 of 2005.

2.It is the case of the prosecution that, the petitioner was working as a watchman in Indu Solder and Alloys Company in plot No.59, SIDCO Industrial Estate, Thirumazhisai and was stealthily stealing aluminium bars from time to time. On 25.01.2005 (Tuesday), Singarayan (P.W.1), Supervisor, Indu Solder and Alloys Company was informed that the petitioner had taken a bag

of aluminium bars. Therefore, Singarayan (P.W.1) lodged a written complaint (Ex.P1) to the police, based on which, the police registered a case in Crime No.102 of 2005 under Section 380 IPC and took up the investigation of the case.

3.The petitioner was arrested on the same day and based on the confession statement, aluminium bars were recovered from the shop of Shankar (P.W.5), a scrap dealer vide mahazar (Ex.P3), in the presence of witnesses viz. Moorthy (P.W.3) and Muthu (P.W.4).

4.After completing the investigation, the police filed a final report in C.C.No.129 of 2005 before the Judicial Magistrate No.II, Poonamallee against the petitioner for the offence under Section 381 IPC. The petitioner pleaded "not guilty" to the charge.

5.The prosecution examined six witnesses, marked 11 documents and 2 material objects.

6.When the petitioner was questioned under Section 313 Cr.P.C., he denied the allegations.

7.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 07.05.2012 in C.C.No.129 of 2005, convicted the petitioner of the offence under Section 381 IPC and sentenced him to undergo six months rigorous imprisonment and pay a fine of Rs.1,000/-, in default to undergo two months simple imprisonment. The appeal in C.A.No.40 of 2012 that was filed by the petitioner was dismissed by the II Additional District and Sessions Judge, Tiruvallur at Poonamallee on 21.09.2012. Challenging the concurrent findings of the two Courts below, the petitioner has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

8.Heard Mr.S.Suresh, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

9.It is trite that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra Vs. Jagmohan Singh Kuldeep Singh Anand and Others, etc. (2004) 7 SCC 659]. Very recently, in Bir Singh Vs. Mukesh Kumar [(2019) 4 SCC 197], the Supreme Court has held as under:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and

Handels GmbH, (2008) 14 SCC 457] , it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. "

(emphasis supplied)

10.Mr.Suresh contended that the revision petitioner has died. The death of the revision petitioner will not abate the criminal revision and therefore, this Court had to necessarily hear either side to decide, whether there is any illegality or impropriety on the findings of the two Courts below.

11.Mr.Suresh further contended that though Singarayan (P.W.1) had stated in the complaint (Ex.P1) that he was told that the petitioner had stolen aluminium bars on 25.01.2005, yet, the prosecution had not examined any person, who had seen the theft and who had told Singarayan (P.W.1) about it. The evidence of Singarayan (P.W.1) did not state the person, who told him about the theft of aluminium bars on 25.01.2005 by the petitioner. However, Singarayan (P.W.1), has stated that aluminium bars were regularly found missing in the company and on suspicion, he gave the complaint (Ex.P1). Mr.Suresh also contended that the two mahazar witnesses have turned hostile and therefore, the petitioner ought not to have been convicted.

12.It is trite that just because the seizure witnesses turned hostile, for which, there are multivarious reasons, the evidence of the police officer cannot be outrightly disbelieved. This Court is required to assess the evidence of the seizing officer with caution. In this case, after the arrest of the petitioner, Manickam (P.W.6), Sub Inspector of Police, interrogated the petitioner, recorded his statement and based on the disclosure, identified Shankar (P.W.5), to whom, the aluminium bars were sold.

13.Shankar (P.W.5), in his evidence, has stated that the petitioner had sold aluminium bars in pieces to him and that, he did not know that they were stolen ones. Mr.Suresh submitted that Shankar (P.W.5) has stated that aluminium powder was recovered from there and not aluminium bars. Shankar (P.W.5), in his evidence, has stated that he is a scrap dealer and his shop is in River Well street in Thirumazhisai; three years back, the petitioner came and sold aluminum pieces weighing 3 kgs; thereafter, police came and seized them; only then, he know that they were stolen from a company. The Tamil

expression used by Shankar (P.W.5), does not mean aluminium powder but aluminium pieces.

14.The trial Court had returned the seized articles to Indu Solder and Alloys Company and they were once again produced and marked as M.O.1 and M.O.2. The trial Court, which has had the opportunity to see the material objects and also the demeanor of the witnesses, has returned a finding that the petitioner had sold the stolen aluminium to Shankar (P.W.5). The appellate Court has also agreed with the finding by giving cogent reasons. Therefore, this Court does not find any infirmity or illegality in the findings of fact arrived at by the two Courts below, warranting interference.

In the result, this Criminal Revision is dismissed as being devoid of merits. Registry is directed to transmit the original records to the respective Courts forthwith.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The II Additional District and Sessions Court,
Tiruvallur at Poonamallee.
- 2.The Judicial Magistrate No.II,
Poonamallee.
- 3.The Inspector of Police,
P-7 Vellavedu Police Station,
Tiruvallur District.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Deputy Registrar,
Criminal Side,
High Court, Madras.
- 6.The Judicial Magistrate No.2,
Tiruvallur at Poonamallee.

CRL.R.C.No.1279 of 2012

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