

Bail Slip

The Petitioners/Accuseds viz., 1.Ellamma,2.Parvathi, 3.Kaveri were released on bail as per order of this Court dated 19.12.2012 in Crl.M.P.No.1 & 2 of 2012 in Crl RC 1504 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.09.2019

PRONOUNCED ON : 19.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1504 of 2012

1.Ellamma
2.Parvathi
3.Kaveri

... Petitioners/Accused

Vs

State rep. by
The Sub Inspector of Police,
Rayakottai Police Station,
Krishnagiri District.
(Cr.No.142 of 2009)

... Respondent/Complainant

Criminal Revision preferred under Section 397 and 401 Cr.P.C. challenging the judgment and order dated 20.07.2012 passed by the Principal Sessions Judge, Krishnagiri in C.A.No.28 of 2010 confirming the conviction and sentence dated 30.09.2009 passed by the District Munsif-cum-Judicial Magistrate, Thenkanikottai in C.C.No.59 of 2009.

For Petitioners : Mr.L.Baskaran

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

O R D E R

This revision has been preferred challenging the judgment and order dated 20.07.2012 passed by the Principal Sessions Judge, Krishnagiri in C.A.No.28 of 2010 confirming the conviction and sentence dated 30.09.2009 passed by the District Munsif-cum-Judicial Magistrate, Thenkanikottai in C.C.No.59 of 2009.

2. It is the case of the prosecution that, on 10.06.2009, around 14.30 hours, the petitioners came to Sri Balaji Jewellers, run by Prathap (P.W.1) for making some purchases and in the guise of selecting jewellery, they committed theft of a gold ring (M.O.1) stealthily, which was noticed by Prathap (P.W.1) in the mirror of the shop; Prathap (P.W.1) caught them red handed and handed them over to the police and lodged a complaint (Ex.P1), based on which, the police registered a case in Crime No.142 of 2009 under Section 380 IPC and after completing the investigation, filed a final report in C.C.No.59 of 2009 in the Court of District Munsif-cum-Judicial Magistrate, Thenkanikottai against the petitioners.

3. The petitioners were charged for the offence under Section 380 IPC and when questioned, they pleaded "not guilty". To prove the case, the prosecution examined seven witnesses, marked six exhibits and one material object. When the petitioners were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. No witness was examined on behalf of the petitioners nor any document marked.

4. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 30.09.2009 in C.C.No.59 of 2009 convicted and sentenced the petitioners as under :

Provision under which convicted	Sentence
Section 380 IPC	6 months rigorous imprisonment and fine of Rs.1,000/- each, in default to undergo 3 months simple imprisonment

The appeal in C.A.No.28 of 2010 filed by the petitioners, was dismissed by the Principal Sessions Judge, Krishnagiri on 20.07.2012. Challenging the concurrent findings of fact recorded by the two Courts below, the petitioners have filed the present revision under Section 397 read with 401 Cr.P.C.

5. Heard Mr.L.Baskaran, learned counsel for the petitioners and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

6. Before advertng to the rival submissions, it may be necessary to state here that, a three Judge Bench of the Supreme Court in Girish Kumar Suneja Vs. CBI [(2017) 14 SCC 809], has held that revisional jurisdiction is a discretionary one and can be exercised only if the High Court finds that there is an error apparent on the face of the record and for better appreciation, the relevant portion of the order is extracted hereunder:

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 Cr.P.C."

6.1. While exercising revisional powers under Section 397 r/w 401 Cr.P.C., this Court is required to find out, if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context, it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra Vs Jagmohan Singh Kuldip Singh Anand and Others, etc. [(2004) 7 SCC 659]:

"22.The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of

superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

“for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court”.

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

(emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in *Duli Chand v. Delhi Admn.* [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

“The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse.”

6.2. This legal principle has been reiterated very recently by the Supreme Court in *Bir Singh Vs Mukesh Kumar* [(2019) 4 SCC 197], wherein, the following question of law was formulated :

“(i) whether a Revisional Court can, in exercise of its discretionary jurisdiction, interfere with an order of conviction in the absence of any

jurisdictional error or error of law"

The answer of the Supreme Court to the aforesaid question is as under :

"19.It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

20.As held by this Court in 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. The answer to the first question is therefore, in the negative."

7. Mr.L.Baskaran, learned counsel for the petitioners submitted that, the petitioners did not steal the ring but, selected the ring, negotiated the price with Prathap (P.W.1). When Prathap (P.W.1) quoted an exorbitant rate, a quarrel ensued and they returned the ring. However, Prathap (P.W.1) raised a hue and cry and foisted the case against the petitioners.

8. Per contra, learned Government Advocate (Crl. Side) refuted the contentions.

9. This Court carefully considered the rival submissions.

10. Prathap (P.W.1), in his evidence, has stated that, he is the owner of Sri Balaji Jewellers, on 10.06.2009, around 02.30 p.m., the petitioners came to his shop and asked for a silver anklet; he showed them some pieces but, they were not satisfied with it; then, they asked for a ring; he showed them some rings and at that time, he went to attend another customer; the petitioners stealthily secreted the ring, which he saw through the side mirror; he immediately downed the shutter and confronted them about the ring; initially, they denied and later, they handed over the ring; therefore, he and his employees took the petitioners to the police station along with the ring and lodged a complaint (Ex.P1). The defence was not able to make any serious dent in the cross-examination of Prathap (P.W.1). The evidence of Prathap (P.W.1) has been corroborated by Murugesh (P.W.2), who was one of the customers at the relevant time.

11. This Court does not find any infirmity or perversity in the findings arrived at by the two Courts below warranting interference.

In the result, the judgment and order dated 20.07.2012 passed by the Principal Sessions Judge, Krishnagiri in C.A.No.28 of 2010 is confirmed and this revision stands dismissed as being devoid of merits. The trial Court is directed to immediately hand over the custody of the ring (M.O.1) to Parathap (P.W.1) and to secure the petitioners to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

gya

To

- 1.The Principal Sessions Judge,
Krishnagiri.
- 2.The District Munsif-cum-Judicial Magistrate,
Thenkanikottai, Krishnagiri District.
- 3.The Chief Judicial Miagistrate,
Krishnagiri (For Information)
- 4.The Sub Inspector of Police,
Rayakottai Police Station,
Krishnagiri District.
5. The Public Prosecutor,
High Court of Madras.

Copy To
The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.T.Panchatsaram, Advocate SR.No.81325

CRL.R.C.No.1504 of 2012

SPD(CO)
GMY(25/10/2019)