

**BAIL SLIP**

The Appellant/Accused namely 1. Kathan, S/o.Muthusamy, 2. Raja alias Dharmaraj, S/o.Govindan, 3. Arumugam, s/o.Sabapathy were released on bail by this Hon'ble Court made in MP(MD)No.1/2011 in CRL RC (MD)No.821/2011 dated 29.09.2011.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C. (MD)No.821 of 2011

1.Kathan

2.Raja @ Dharmaraj

3.Arumugam ... Petitioners/Appellants/Accused 1 to 3

Vs.

State represented by,
The Inspector of Police,
Thogur Police Station,
Thirukattupalli Circle,
Thanjavur District.
(Crime No.71 of 2005)

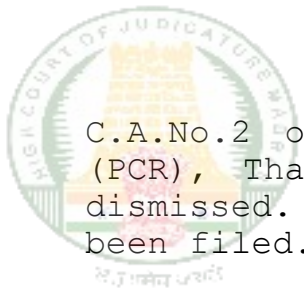
... Respondent/ Respondent/Complainant

Prayer: Criminal Revision Case is filed under Section 307 r/w 401 of Cr.P.C, to set aside the judgment of the learned Additional Chief Judicial Magistrate, Kumbakonam made in C.C.No.4 of 2006, dated 21.12.2010 in convicting the petitioners for the offence under Section 451 and 380(2) of IPC and imposing rigorous imprisonment of two years and a fine of Rs.500/- in default six months rigorous imprisonment each confirmed in Crl.Appeal No.2 of 2011, dated 16.08.2011, rendered by I Additional Sessions Judge (Protection of Civil Rights), Thanjavur.

For Petitioners	: Mr.A.Rahul
For Respondent	: Mr.A.Robinson
	Government Advocate (Crl. Side)

O R D E R

The revision petitioners herein are three in number. They were convicted for the offence under Sections 451 and 380(2) of I.P.C. and sentenced to two years rigorous imprisonment for each levied with fine vide judgment dated 21.12.2010, on the file of the learned Additional Chief Judicial Magistrate, Kumbakonam, in C.C.No.4 of 2006. Challenging the same, they filed



C.A.No.2 of 2011 before the learned I Additional Sessions Judge (PCR), Thanjavur. By judgment dated 16.08.2011, the appeal was dismissed. Questioning the same, this criminal revision case has been filed.

2. During the pendency of this petition, A2/Raja @ Dharmaraj passed away. Therefore, the criminal proceedings against A2/Raj @ Dharmaraj will stand abated and this criminal revision case stands dismissed as far as A2/Raja @ Dharmaraj is concerned. We are now concerned about only A1/Kathan and A3/Arumugam.

3. The prosecution case is that there was a theft of Lord Muruga idol in a temple in the village of Thogur. Information was lodged about the idol theft by P.W.1/Ganesen, who is the temple priest before the Inspector of Police, Thogur Police Station vide Ex.P.1. Crime No.71 of 2005 (Ex.P.14) was registered on 12.12.2005. Investigation was undertaken and final report came to be filed before the learned Additional Chief Judicial Magistrate, Kumbakonam and cognizance of the offence was taken in C.C.No.4 of 2006. Charges were framed against the three accused for the offence under Sections 451 and 380(2) of I.P.C. The accused denied the charges and claimed to be tried.

4. The prosecution examined as many as 13 witnesses and marked Exs.1 to 15. M.O.1 to M.O.5 were also marked. On the side of the accused no evidence was adduced.

5. The learned counsel appearing for the revision petitioners submitted that the prosecution is not quite clear as to when the theft took place. While the defacto complainant/P.W.1 would claim that the theft was on 08.12.2005, in the FIR it was mentioned as 09.12.2005 but in the final report it was mentioned that the theft took place at any time between 24.04.2005 to 09.12.2005. The prosecution is not clear as to when the idol was stolen.

6. The revision petitioners' counsel would also contend that in this case different police were involved. The first accused was arrested by Lalgudi police on 12.12.2005 whereas, A2 and A3 were arrested by Samayapuram Police on 14.12.2005. Thogur police formally arrested A2 and A3 only on 20.01.2006.

7. He would also point out that even though A1 had made a confession before Lalgudi police and the admissible portion of the confession was marked as Ex.P.7, still there was no discovery of any fact pursuant to the confession made by A1. He therefore submitted that atleast as against A1, there is no legally admissible evidence.

8. Per contra, learned Government Advocate (Crl. Side) placed reliance on the decisions of the Honourable Supreme Court reported in **[(2000) 6 SCC 269 (State of Maharashtra Vs. Damu)] [2004 10 SCC 657 (Anter Singh Vs. State of Rajasthan)]** and **[(2014) 5 SCC 509]**



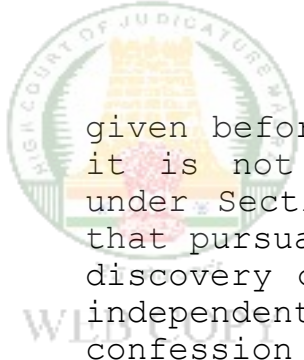
(Dharam Deo Yadav Vs. State of Uttar Pradesh)]. His submission is that even though there was no recovery of any material object pursuant to the confession made by A1, still inasmuch as the involvement of A2 and A3 came to light following his confession, the same is admissible in evidence in terms of Section 27 of the evidence Act. He therefore wanted this Court to sustain the impugned judgments of the Courts below and dismiss the criminal revision case.

9.I carefully considered the rival contentions and perused the evidence on record.

10.It is true that Thogur police effected formal arrest A2 and A3 only on 21.01.2006. It is equally true that A2 and A3 were nabbed by Samayapuram police in connection with some other theft case and pursuant to the confession made by A2 and A3 before Samayapuram police, the material objects M.O.1 and M.O.5 were recovered. M.O.1, idol was recovered based on the confession of A2 and A3.

11.It is true that the prosecution has come out with three different versions as regards the theft of idol. The timings may be different but there cannot be any dispute that the idol was stolen. Therefore, mere difference in the dates will not affect the prosecution case. Merely because, the involvement of A2 and A3 in the case on hand came to light following their arrest and confession in some other case, one cannot hold that the same cannot be put to use the prosecution on hand. The fact remains that M.O.1/Lord Muruga idol was stolen and the fact remains that it was recovered from sugarcane field, pursuant to the confession of A1 and A2. Even though Ex.P.4 and Ex.P.5 may not have been the basis for recovery of M.O.1 and M.O.5, the Courts below were very much justified in placing reliance on Ex.P.12. Ex.P.12 is the recovery mahazer. It is mentioned that in Ex.P.12 that even though it was based on the confession of A2/Raja @ Dharamaraj, it was A3/Arumugam, who actually dug out the idol. Ex.P.12 was marked through P.W.12/Thangavelu, who was the Inspector of Police, Samayapuram Police Station. Only formal suggestions were put to P.W.12 during cross examination. His testimony could not be shaken. Of course, the recovery witnesses., P.W.6 and P.W.7. namely., Balakrishnan and Velusamy turned hostile. But then, in Ex.P.12/recovery mahazer itself it has been clearly mentioned that the idol/M.O.1 was seized by Thangavelu. Therefore, I am of the view that merely because the attested witnesses, P.W.6 and P.W.7 turned hostile, Ex.P.12 cannot be thrown out. It was marked through P.W.12/Thangavelu, whose name is very much figuring in Ex.P.12. Since in Ex.P.12, it has been mentioned that it was A3 who dug out and produced the idol/M.O.1, I am of the view that the Courts below were justified in finding the guilty of A3.

12.Now comes the question of the culpability for A1. It is not in dispute that except Ex.P.10 confession, there is no other legally admissible evidence against A1. Ex.P.10 confession was



given before the police when he was in police custody. Therefore, it is not admissible in evidence except to the extent permitted under Section 27 of the Evidence Act. But, it is not in dispute that pursuant to the confession made by A1 vide Ex.P.10, there is no discovery of any fact. The involvement of A2 and A3 came to light independently following their arrest by Samayapuram police. The confession of A1 did not lead to the arrest of A2 and A3 or to the discovery of place where M.O.1/idol was hidden. Since there has been no discovery any fact in terms of Section 27 of the Evidence Act, pursuant to Ex.P.10, I am of the view that there is no legally admissible evidence against A1. The court below erred in finding A1 guilty. Therefore, the impugned, judgment is set aside insofar as first appellant was convicted the sentence by the Courts below. But then, the conviction and sentence imposed A3 is confirmed. The criminal appeal is partly allowed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

To

1. The I Additional Sessions Judge
(Protection of Civil Rights),
Thanjavur
2. The Additional Chief Judicial Magistrate,
Kumbakonam.
3. The Inspector of Police,
Thogur Police Station,
Thirukattupalli Circle,
Thanjavur District
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.R.C. (MD) No.821 of 2011

30.07.2019

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