



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.R.C.(MD)No.448 of 2011

WEB COPY

Karthikeyan @ Jebaraj

... Petitioner

Vs.

The Inspector of Police,
Kalugumalai Police Station,
Tuticorin District.
(Crime No.52 of 2008)

... Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records of the lower Courts and to duly quash and set aside the judgments of Appellate Court passed by passed by the learned Additional Sessions Judge, Fast Track Court No.II, Tuticorin, in C.A.No.36 of 2008, dated 28.01.2011 modifying the judgment of the learned Judicial Magistrate No.II, Kovilpatti, in C.C.No.88 of 2008, dated 07.06.2010 and acquit the revision petitioner by allowing this revision petition.

For Petitioner : Mr.S.Muthal Raj

For Mr.A.Joseph Jawahar

For Respondent : Mrs.S.Bharathi

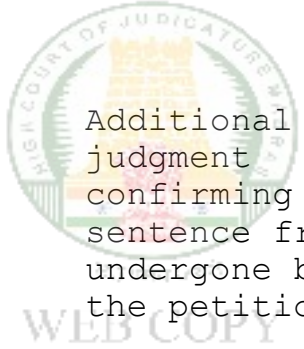
Government Advocate (CrI. Side)

ORDER

The revision petitioner herein is a poojari in a temple at Kalugumalai. He was implicated in Crime No.52 of 2008 registered on the file of Kalugumalai Police Station, Tuticorin District. The petitioner is said to have visited one Sri Muthumariamman temple in K.Kumarapuram on 18.06.2008 at about 09.00 a.m. and committed theft of one sovereign gold chain of the presiding deity. This theft was noticed only later and Ex.P.1/complaint was given on 23.06.2008. based on same, Ex.P.5/FIR was registered. Investigation was undertaken and final report was filed. The Courts below took cognizance of the offence under Section 380 of I.P.C. and Section 451 of I.P.C. The petitioner denied the charges and claimed to be tried.

2.The prosecution examined as many as 12 witnesses and marked Ex.Ps.1 to 6. M.Os.1 to 4 were also marked. On the side of the accused no evidence was adduced.

3.The learned Trial Magistrate by judgment dated 07.06.2019 acquitted the petitioner of the charges under Section 451 of I.P.C. but convicted him for the offence under Section 380 of I.P.C. and also levied fine of Rs.5,000/-. Questioning the same, the petitioner filed C.A.No.36 of 2010 on the file of the learned



Additional Sessions Judge, Fast Track Court - II, Tuticorin. By judgment dated 28.01.2010, the lower Appellate Court while confirming the conviction imposed by the Trial Court reduced the sentence from one year to seven months, which was the period already undergone by the petitioner in incarceration. Challenging the same, the petitioner filed this criminal revision case.

4.The petitioner's counsel reiterated the contents set out in the memorandum of grounds.

5.It is true that there is no direct eye-witness for the occurrence in question. It is also true that the petitioner was not implicated in the FIR and in the complaint. But then, the case against the petitioner rests on the recovery. The jewels were recovered pursuant to the confession made by him. In other words, the entire case of the prosecution rests on the recovery under Section 27 of the Evidence Act. The petitioner however has not placed any material before the Court below or before this Court to doubt the recovery made from him. No motive is attributed to the defacto complainant or the prosecution. Therefore, I am of the view that the reasoning of the Courts below founded on the recovery of the stolen articles from the petitioner's person are well founded. The petitioner had already spent seven months in prison and that is why, the First Appellate Court had reduced the sentence from one year rigorous imprisonment to the period already undergone by the petitioner in incarceration. I find no grounds to interfere with the judgments of the Courts below and the criminal revision case stands dismissed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

To:

1.The Additional Sessions Judge,
Fast Track Court No.II, Tuticorin,.

2.The Judicial Magistrate No.II,
Kovilpatti,.

3.The Inspector of Police,
Kalugumalai Police Station,
Tuticorin District.

+1 CC to Mr.A.Joseph Jawahar, Advocate SR-71359.