



BAIL SLIP

The Appellant / Accused 1.Pandi @ Pulipandi, S/o.Arumugathevar, 2. S.Karthick, S/o.Sundar Thevar was released on bail (Accused Not in Jail) was granted order dated 21.08.2015 made in Crl.MP(MD)Nos.1, 1 of 2015 in Crl.RC(MD)Nos.353 and 360 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.RC(MD) Nos.442, 353 & 360 of 2015

Karuppasamy(died)	...	Petitioner in Crl.RC.(MD)No.442 of 2015/ Appellant/ Accused No.2
Pandi @ Pulipandi	...	Petitioner in Crl.RC.(MD)No.353 of 2015/Appellant/Accused No.3
S.Karthick	...	Petitioner in Crl.RC.(MD) No.360 of 2015/ Appellant/Accused No.4
	vs.	
State represented by The Inspector of Police, Tiruthangal Police Station, Crime No.409/2002, Virudhunagar District.	...	Revision Respondent/Respondent/ Complainant

COMMON PRAYER: Criminal Revision Petitions are filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records from the lower Court and to duly set aside the judgment passed by Principal District and Sessions Court, Virudhunagar District at Srivilliputtur in C.A.Nos.191, 188 & 190/2008 dated 03.07.2015 in C.C.No.908/2003 dated 26.09.2008 on the file of the Judicial Magistrate, Sivakasi, Virudhunagar District.

For Petitioner in : Mr.A.Thiruvadi Kumar
Crl.R.C.(MD) Nos.353 & 360 of 2015

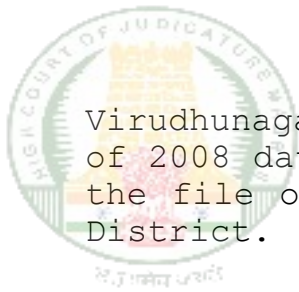
For Petitioner in : Mr.S.Ramasamy
Crl.R.C.(MD) No.442 of 2015

For Respondent in all Petitions : Mrs.S.Bharathi,
Govt. Advocate (Criminal Side)

C O M M O N O R D E R

Since the issued involved in all these criminal revision cases are one and the same, they are clubbed together and disposed of by this common order.

2. These Criminal Revision Cases are filed to set aside the judgment passed by Principal District and Sessions Court,



Virudhunagar District at Srivilliputtur in C.A.Nos.191, 188 & 190 of 2008 dated 03.07.2015 made in C.C.No.908/2003 dated 26.09.2008 on the file of the learned Judicial Magistrate, Sivakasi, Virudhunagar District.

3. For the sake of convenience, the petitioners herein are referred as A2, A3 and A4 and the respondent is referred as complainant. A2 to A4 were convicted and sentenced by the trial Court as follows:-

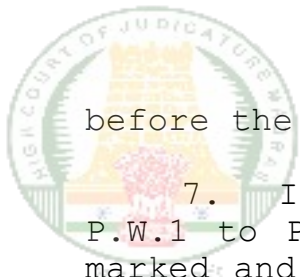
S.No	Provisions under which the petitioners A1 to A4 were convicted	Imprisonment	Fine
1	457 of I.P.C.	Three years Rigorous Imprisonment	Rs.50/- in default, to undergo Simple Imprisonment for a further period of one month
2	380 of I.P.C.	Three years Rigorous Imprisonment	Rs.50/- in default, to undergo Simple Imprisonment for a further period of one month

* the period of sentence in both the offences, viz. 457 and 380 of IPC shall run consequently.

4. Aggrieved over the above said order of conviction, the petitioners herein, A2 to A4 preferred Appeals before the lower Appellate Court in Appeal nos.191, 188 & 190 of 2008 and the lower Appellate Court modified the period of sentence to run 'concurrently' instead of 'consequently'. Aggrieved over such concurrent findings, the present criminal revision cases have been filed.

5. The case of the prosecution is that P.W.1 was running a pawn broker shop at Thiruthangal. On 12.12.2002, P.W.2, wife of P.W.1 opened the pawn broker shop and found that the shop was broke opened and up to 35 sovereign of gold jewels were stolen. Again on 11.02.2003, P.W.2 gave another complaint that on the earlier date of occurrence (i.e) on 12.12.2002, about 218 sovereign of gold jewels were also stolen.

6. On receipt of the information given by P.W.2, the Law Enforcing Agency took up the investigation of the case. During the investigation, on 25.06.2003, one of the co-accused Karuthapandi (A1) was arrested and based on his confession statement, A2 to A4 along with some other accused were also arrested and some stolen articles were recovered from them. After completion of the investigation, the Investigating Officer/P.W.18 filed a final report



before the learned Judicial Magistrate, Sivakasi.

7. In order to prove the case of the prosecution, witnesses P.W.1 to P.W.18 were examined and exhibits Ex.P.1 to Ex.P.28 were marked and material objects M.O.1 to M.O.28 were also marked. After conducting elaborate trial, the trial court convicted and sentenced the accused A1 to A4 as stated supra, who were found guilty for the offence under Sections 457 and 380 of I.P.C. in CC.No.908 of 2003 dated 29.06.2008 and directed the accused to suffer the said punishment 'consequently'. Aggrieved over the said order of conviction, the accused herein, viz. A2, A3 and A4 filed appeals before the lower Appellate Court in C.A.Nos.191, 188 and 190 of 2008 and the said appeals were clubbed together and the lower Appellate Court confirmed the sentence of conviction ordered by the trial Court on 03.07.2015 and modified the trial Court's order, thereby directing the accused to suffer the period of punishment 'concurrently'. Assailing the said order of conviction passed by the lower Court and the lower Appellate Court, the present revision cases have been filed.

8. Mr.S.Ramasamy, learned counsel appearing for A2, Karuppasamy made a submission that the revision petitioner is no more and therefore, the criminal revision case filed by him in Crl.R.C.(MD) No.442 of 2015 may be closed as abated.

9. Mr.A.Thiruvadi Kumar, learned counsel appearing for A3 and A4 would submit that as per Section 397(2)(1) of Cr.P.C. the revision petitions are maintainable, if the order is perverse. While exercising the revisional powers, this Court has to consider that any sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, if the High Court is satisfied that such order of the inferior Court is erroneous, then the High Court shall call for the records and examine any proceedings lying before any inferior Court, for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any findings recorded by the trial Court.

10. In the present case, admittedly, the prosecution examined P.W.1 to P.W.18, out of which P.W.'s 7, 8, 10 to 14 have turned hostile. However, based on the evidences of P.W.'s 6, 9 and 15, who are the recovery witnesses, the trial Court as well as the lower Appellate Court have convicted the accused for a period of three years, which is legally unsustainable one. Further, it has to be taken into consideration that all those witnesses were officially interested witnesses. The testimony of the witnesses cannot be accepted in toto and further the prosecution has not established the case beyond reasonable doubt. In such circumstances, this Court has the power to interfere in the conviction order passed by the inferior courts. Accordingly, he prayed for allowing the revision petitions.

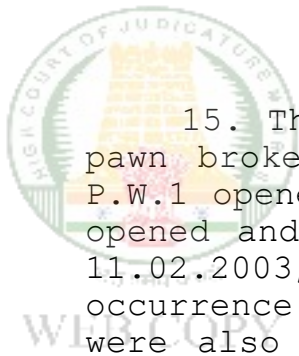


11. Mrs.S.Bharathi, learned Government Advocate (Criminal side) appearing for the complainant State would submit that though some of the witnesses have turned hostile, however, P.W.6 (Tahsildar), P.W.9 (Village Administrative Officer) & P.W.15 (Manager of Muthoot Finance Limited), who were the three mahazar witnesses were available at the time of recovery of the stolen jewels from the accused person. P.W.9 is the mahazar witness in respect of A3 & A4 and in his presence, recovery of stolen articles were made.

12. In the present case, PW.1 is the owner of Pawn Broker shop and P.W.2 is the wife of P.W.1. In their evidence, they have clearly deposed that though two complaints were lodged, one complaint was made on 12.12.2002 and another complaint was registered on 11.02.2003, the Law Enforcing Agency conducted investigation by clubbing the two complaints together and investigation was conducted. After investigation, the accused were snapped by the Law Enforcing Agency. In respect of A3, no previous case has been registered and in respect of A4, prior to the incident, 20 cases of similar nature were registered and subsequent to the incident, nine cases were registered.

13. In the present case, though in respect of recovery made against other accused, have turned hostile, in respect of petitioners A3 and A4, the mahazar witnesses, who were present at the time of recovery of stolen articles, clearly deposed that, all stolen articles were recovered from the petitioners A3 and A4. P.W.7 had stated that on 26.06.2003, at about 2:00 p.m. on seeing the Inspector of Police, Sivakasi East Police Station along with other police officials, when the accused Karuppasamy / A2 tried to escape from the spot, he was surrounded by the police party and was arrested by them. On enquiry, A2 Karuppasamy gave his voluntary confessional statement in which he had stated that he along with other accused committed dacoity at the pawn broker shop situated at Thiruthangal and he had pledged 15 gold rings at Muthoot Bank stolen from that said shop. P.W.7 along with P.W.8 / Rangarajan(V.A.O.) attested the voluntary confession statements made by the accused A2. Thereafter, the police party took the accused person A2 to Muthoot Bank for further investigation and seized the 15 gold rings and the same was recorded in Ex.P.10. On 27.06.2003, A3 and A4 were arrested near the Thiruthangal chariot at about 6:00 a.m and their voluntary confession statements were recorded in the presence of P.W.9

14. Considering the above facts and circumstance of these cases, the issue framed in the revision case is that, *"whether the order of the trial Court/ inferior Courts can be interfered by exercising power under Section 397 of the Criminal Procedure Code?"*



15. The case of the prosecution is that P.W.1, is the owner of pawn broker shop at Thiruthangal. On 12.12.2002, P.W.2, wife of P.W.1 opened the pawn broker shop and found that the shop was broke opened and up to 35 sovereign gold jewels were stolen. Further on 11.02.2003, she gave another complaint that on the earlier date of occurrence (i.e) on 12.12.2002, about 218 sovereign of gold jewels were also found to be stolen. On receipt of information given by P.W.2, the Law Enforcing Agency conducted the investigation of the case and on 26.06.2003, one of the co-accused Karuppasamy(A1) was arrested and based on his confession statement, the petitioners A3 and A4 and some other accused were also arrested and stolen articles were recovered. After completion of investigation, the Investigating Officer P.W.18 filed the final report before the learned Judicial Magistrate, Sivakasi.

16. Considering the facts and circumstances, admittedly all the 4 accused were punished for the offence under Sections 457 and 380 of I.P.C. sentencing to undergo a period of three years Rigorous Imprisonment under each section and pay a fine Rs.50/- in default to undergo one month simple imprisonment under each section. A1 did not file any revision as against the conviction. However, A2, A3 & A4 filed appeals before the lower Appellate Court and during the pendency of the same, A2 passed away. Hence, this Court dismisses the criminal revision case filed in Cr.R.C.(MD) No.442 of 2015, dated 03.03.2020, as abated and the revision petitions viz. Crl.R.C.(MD) Nos.353 and 360 of 2015 are pending in respect of A3 and A4. Admittedly, A3 and A4 were implicated for the above said offence based on the confession of A1 and subsequently A3 and A4 were secured by the Law Enforcing Agency and after investigation, the stolen articles were recovered from A3 and A4 in the presence of P.W.9. This Court need not discuss the other evidences in respect of other accused. However, the necessary witness required for deciding the present case is P.W.9. Therefore, the evidence of P.W.9 is as follows:

"P.W.9 is presently working as a Village Administrative Officer (V.A.O) at Anupankulam. While he was working as V.A.O at Thiruthangal, on 27.06.2003, during the morning hours at about 6:00 a.m. he along with the V.A.O of Keela Thiruthangal, Mr.Murugesan (P.W.8) were travelling together near Sivakasi Viruthunagar road for performing an official work, during which they noticed the Inspector of Police, Sivakasi East police Station along with his police party who caught hold of two accused namely Pulipandi(A3) and Karthik(A4). When the accused were examined, they gave their voluntary confession statements that on 12.12.2002, Pulipandi(A3) along with his associates committed dacoity at a pawn broker shop at Thiruthangal by break opening the shop and had stolen gold jewels and later divided the same into equivalent shares among themselves. A3 took his share of gold jewels, and sold some of the gold jewels to one



Srinivasan of Srivilliputhur and had kept the remaining gold jewels in Karthik's(A4) house and when A3 tried to sell the gold jewels, he was arrested by the police. His voluntary confession statement was recorded as Ex.P.13. The voluntary confession statement of A4 was recorded as Ex.P.14 wherein he had stated that he sold his share to one Paulraj of Srivilliputhur. P.W.9 along with V.A.O Murugesan attested the confession statements. Later the police party went to the house of Karthik and confiscated the stolen gold jewels and the recovery also took place in the presence of P.W.9 and they attested their signatures and the same was marked as Ex.P.16. Thereafter, the police party took the accused to Srivilliputhur to identify Srinivasan to whom the stolen jewels were sold and they seized 431 grams of gold bar and 24 gms gold jewels and the seizure mahazar was marked a Ex.P.17. Paulraj was identified by A4 and about 560 grams of gold bar was seized and it was marked as Ex.P.18. All the seized objects were attested by P.W.'s 8 & 9."

17. On perusal of the above evidence of P.W.9, it is clear that the recovery was made in the presence of P.W.9 and in order to disprove the prosecution, no evidence was adduced by the accused A3 and A4. Hence, I do not find any perversity in the order passed by the Lower Appellate Court. Hence, the concurrent findings of the trial Court and the lower Appellate Court need not be interfered unless the petitioners establish the perversity of the lower Court order. Therefore, the issue raised in the Criminal revision case is answered as against the petitioners A3 and A4.

18. Accordingly, these Criminal Revision Cases are dismissed confirming the conviction made in the judgment, dated 03.07.2015 rendered in C.A.Nos.191, 188 and 190 of 2008 by the Principal District and Sessions Court Virudhunagar District at Srivilliputhur. However, the sentences of imprisonment of three years rigorous imprisonment awarded each for the commission of offences under Sections 457 and 380 of I.P.C, remains the same and the period of sentence shall run concurrently. The period of incarceration already undergone by the revision petitioners / A3 and A4 during the course of the investigation and trial, is to be set off under Section 428 Cr.P.C.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



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To

1. The Principal District and Sessions Judge,
Virudhunagar District, Srivilliputtur

2. The Judicial Magistrate,
Sivakasi, Virudhunagar District.

3. The Inspector of Police,
Tiruthangal Police Station,
Virudhunagar District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to :

The Section Officer, Criminal Records,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

Common order made in
Crl.RC(MD) Nos.442, 353 & 360 of 2015
Dated: 03.03.2020

SMA/07/05/2020/7P/6C