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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

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THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.R.C.No.321 of 2016

and Crl.MP.No.2138 & 2139 of 2016

Sathiesh @ Sivakumar ... Petitioner/Accused No.2

Vs.

The State

By Sub Inspector of Police,
Sivagiri Police Station,
Sivagiri,
Erode District.

... Respondent/Complainant

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. seeking to set aside the judgement dated 28.08.2014 made in Crl.A.No.8 of 2014 on the file of the Principal Sessions Court, Erode, confirming the conviction and modifying the sentence of the judgement dated 07.01.2014 in C.C.No.81 of 2009 on the file of the District Munsif - Cum - Judicial Magistrate Court, Kodumudi.

For Petitioner : Mr.A.Sundaravadhanan

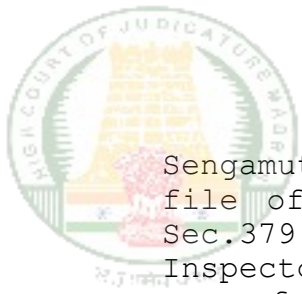
For Respondent : Mr.A.Gopinath
Government Advocate

ORDER

This criminal revision has been filed seeking to set aside the judgement of the learned Principal Sessions Judge, Erode dated 28.08.2014 passed in Crl.A.No.8 of 2014, confirming the conviction and modifying the sentence of the judgement of the learned District Munsif - Cum - Judicial Magistrate, Kodumudi dated 07.01.2014 in C.C.No.81 of 2009.

2. This petitioner is the second accused in CC.No.81/2009.

3. According to the case of the prosecution, on 01.09.2008 at about 1.00am, accused 1 to 3 had stolen one goat worth Rs.4,000/- belonging to Sengamuthu, with an intention to sell the same and raise money. Based on the complaint given by



Sengamuthu/PW.1, a case was registered in Cr.No.209/2009 on the file of Sivagiri Police station for the alleged offence under Sec.379 IPC. The FIR was prepared by PW.5/R.B.Sundharam, Sub Inspector of Police/Investigating Officer. He also took up the case for investigation went to the place of occurrence and prepared the observation mahazaar and rough sketch in the presence of the witnesses.

3.1. On 02.09.2009 when he was checking vehicles at Vilakethethi, the accused came in a Maruthi car. When he enquired them, they gave their confession statement in the presence of the witness/PW.4. Their confession statement led to the recovery of the goat under Seizure Mahazar (Ex.P.4). The seized goat was sent to Court by Form-95, which is marked as Ex.P.7 and the accused were arrested and sent to judicial custody. After concluding the investigation, charge sheet has been filed against the accused for the offence under Sec.379 IPC.

4. After the case was taken on file and after completing the legal mandates, charges were framed against the accused under Sec.379 IPC he was questioned. Since the accused denied the charges and claimed to be tried, the trial was conducted.

5. During the course of the trial, on the side of the prosecution, 5 witnesses have been examined as PW.1 to PW.5 and 7 documents were marked as Ex.P.1 to P.7. The seized goat was marked as M.O.1. After the conclusion of the trial and after considering the material evidence available on record, the learned Trial Judge found the accused guilty under Sec.379 IPC and convicted and sentenced him as below:

Rank of the accused	Povision under which convicted	Sentence
A-2	Sec.379 IPC	To undergo one year of rigorous imprisonment

The Criminal Appeal filed by the accused before the learned Principal District Sessions Judge, Erode in Crl.A.No.5/2014 was also dismissed, confirming the conviction. However the sentence was modified reduced to 6 months rigorous imprisonment. Aggrieved over the same, the second accused has filed this Criminal Revision Case.

6. Heard Mr.A.Sundaravadhanan, learned counsel for the Revision Petitioner and Mr.A.Gopinath, Government Advocate, (Cri.side) appearing for the respondnet/State.



7. The learned counsel for the revision petitioner submitted that the petitioner/A-2 is not involved in the occurrence and there is no incriminating evidence against him. He further submitted that the vehicle in which all the three accused said to have travelled was not marked as a Material Object before the trial Court, but the same was marked only before the Appellate Court. The Appellate Court has marked the vehicle only during the pendency of the appellate proceedings before the Sessions Court. The stolen property namely the goat was seen in the custody of the accused in a Maruthi Car bearing Registration No.TN.09-E-5940. At the time when the Investigation Officer enquired them the accused did not give any acceptable explanation for possessing the goat. On their confession, the goat was recovered and it was marked as the case properties in this case. The evidence of the complainant would show that the goat belonged to him and it was found missing from the night of 01.09.2009.

8. The Government Advocate, (Cri.side) appearing for the respondent/State submitted that the prosecution ought to have marked the Maruthi car in which the accused travelled along with the goat. But this minor discrepancy on the part of the Investigation Officer will not defeat the entire case of the prosecution, especially when the recovery was proved by the prosecution beyond reasonable doubt.

9. Point for consideration:

Whether the findings and judgment of the Appellate Court is fair, proper and legally sustainable?

10. Point: This is a case of theft in which the stolen property has been recovered from the accused. The stolen property is the goat of the complainant. And hence it can not be claimed by the accused that the said property is planted by the police and that the recovery is a drama enacted by them.

11. When the stolen goat was found to be in possession of the accused and the accused could not offer any explanation for his possession over the same, it has to be presumed under sec.114 of the Evidence that the accused had stolen the same. It is true that the van in which the goat was taken ought to have been marked as a Material Object before the trial Court itself. But the said omission was subsequently cured at the time of hearing the appeal. There should not be any negligence on the part of the prosecution to mark the van in which the goat was found. In order to avoid the practical difficulties in bringing the van to Court at the time of trial, the photographs of the



vehicle with its Chasis number and Engine Number can be taken and preserved in the Court, at the time when the vehicle is given on interim custody to its owner. And during trial, it is sufficient to mark the photographs. So non-marking of the Vehicle as a Material Object can not be considered as fatal to the case of the prosecution.

12. But in this case the most important case property is the goat and it has been recovered from the accused and the recovery is proved beyond reasonable doubt with the evidence of recovery witness namely PW4-Karthikeyan and the same was identified by PW.1/Sellamuthu. With these proved facts before the Court, the Court can come to one and only conclusion that the accused had stolen the goat and kept it under his illegal custody. The Courts below have rightly appreciated the evidence available on record and recorded a finding of guilt against the accused for the offence under Sec.379 IPC.

13. In the given facts and circumstances of the case, I do not find any reason to interfere with the judgments of the Lower Appellate Court as well as the Trial Court. As it is seen from the records, the sentence imposed as against one of the co-accused has been modified and reduced to the period already undergone by him in prison, this Court is of the view that the very same principle should be adopted in the case of the present petitioner/A-2 also.

In the result, this criminal revision petition is partly allowed and the judgment of the learned Principal Sessions Judge, Erode dated 28.08.2014 passed in CrI.A.No.5 of 2014 is modified to that effect that the guilt of the petitioner/A-2 is confirmed and he is convicted and sentenced to undergo simple imprisonment for a period of imprisonment already undergone by him. Connected Criminal Miscellaneous Petitions in CrI.MP.Nos.2138 & 2139 of 2016 are closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

jrs
To

1.The Principal Sessions Judge,
Erode.



4.The Public Prosecutor,
High Court, Madras-104.

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srg 02/02/2022
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