



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.10.2021
CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.No.1226 of 2020
and
Crl.M.P.Nos.8575 & 8576 of 2020

S.Sivasankar
S/o, Selvam

... Petitioner/Accused No.1

Versus

State by
The Inspector of Police,
Peelamedu Police Station,
Coimbatore.

... Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Sections 397 & 401 of the Code of Criminal Procedure, to set aside the judgment dated 07.03.2020 passed in C.A.No.162 of 2018 by the V Additional District and Sessions Judge, Coimbatore, confirming the judgment dated 13.04.2018 passed in C.C.No.465 of 2013 by the Judicial Magistrate No.VI, Coimbatore.

For Petitioner : Mr.C.D.Sugumar
For Respondent : Mr,M.Sugendran
Government Advocate, (Criminal Side)

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ORDER

This Criminal Revision Petition has been filed to set aside the judgment dated 07.03.2020 passed in C.A.No.162 of 2018 by the V Additional District and Sessions Judge, Coimbatore, confirming the judgment dated 13.04.2018 passed in C.C.No.465 of 2013 by the Judicial Magistrate No.VI, Coimbatore.

2. The respondent police registered a case against the petitioner and yet another person in Crime No.678 of 2013 for the offence under Section 392 I.P.C and after investigation laid a charge sheet before the Judicial Magistrate No.VI, Coimbatore. The learned Magistrate taken the charge sheet on file in C.C.No.465 of 2013. After completing the formalities and conclusion of trial, convicted the petitioner for the offence under section 392 I.P.C and sentenced them to undergo three years rigorous imprisonment and to pay fine of Rs.5,000/- in default to undergo three months simple imprisonment. Challenging the said judgment of



conviction and sentence, both the accused filed the Criminal Appeal before the Principal District and Sessions Court, Coimbatore. The learned Principal District and Sessions Judge taken the case on file in CrI.A.No.162 of 2018 and made over the same to the V Additional District and Sessions Judge, Coimbatore. The learned Additional Judge, after hearing the arguments advanced on either side and considered the materials and judgment of the trial court, dismissed the appeal and confirmed the conviction and sentence passed by the Magistrate. Now challenging the said dismissal of the appeal, the first accused alone has filed the present revision petition before this Court.

3. The learned counsel for the petitioner would submit that it is a put up case against the petitioner by the police. Confession and Recovery Mahazar witnesses were turned hostile and no independent witnesses were examined in this case and other private witnesses other than the defacto complainant were also turned hostile. They did not support the case of the prosecution. Though P.W.3, defacto complainant has stated that she identified the accused before the Judicial Magistrate and the Magistrate one who said to have conducted the identification parade was not examined before the trial court by the prosecution. Even identification proceedings and report were also not marked as prosecution documents. Further, the prosecution produced the photo copy before the defacto complainant and based on seeing the photos only, she identified the accused before the trial court. The observation made by the trial court is that the defacto complainant did not identify the accused at the first instance and when the accused closed to him only, she identified the accused. Therefore, the trial court failed to appreciate the evidence and simply convicted the petitioner based on the official witness. Appellate Court also failed to re-appreciate the evidence and simply endorsed the views of the Magistrate and passed the order, which warrants interference of this Court.

4. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that P.W.3 is the defacto complainant. She has clearly identified the accused and deposed that he is the one who snatched the chain from her and the same was recovered and confession statement also recorded. Therefore, the trial court rightly appreciated the evidence and convicted the petitioner and imposed the sentence. The Appellate Court also rightly re-appreciated the evidence and confirmed the judgment passed by the trial court. Hence there is no merit in the revision and the same is liable to be dismissed.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent.



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6. The case of the prosecution is that on the date of occurrence, while the defacto complainant/P.W.3 walking on the road, A 1 and A2 came in motor cycle and when they approached P.W.3, A1, who is the pillion rider, snatched the gold chain from the neck of P.W.3. Hence the complaint.

7. Admittedly, the respondent police registered a case against the petitioner and yet another person in Crime No.678 of of 2013 for the offence under Section 392 I.P.C. In order to substantiate the charges framed against the accused, on the side of the prosecution, totally seven witnesses were examined and 13 documents were marked. Out of 17 witnesses, P.W.3 is the defacto complainant. P.Ws.1 and 2 are the Confession and Recovery Mahazar witnesses. They were not supported the case of the prosecution. P.W.3 alone has stated that the petitioner and another accused snatched her gold chain and she identified the accused before the Judicial Magistrate. However, merely on perusal of the materials, the prosecution has not marked the proceedings of the Identification Parade and also the report filed by the Magistrate. Further, the said Magistrate was also not examined by the prosecution. The main contention of the revision petitioner is that, since there was no such identification parade was conducted, the Magistrate was not examined and the proceedings and report were also not marked and the Confession and Recovery Mahazar witnesses were turned hostile and the place of occurrence is also not proved.

8. It is seen from the records, the prosecution miserably failed to prove its case beyond reasonable doubt that the accused committed the offence under section 392 I.P.C. Though P.W.3 has stated that she identified the accused, however that was not proved by the prosecution that P.W.3 identified the petitioner and other accused before the Magistrate. Non-examination of the said Magistrate and non-production of the documents are fatal to the case of the prosecution. The Confession and Recovery Mahazar witnesses are also not supported the case of the prosecution. Moreso, the defacto complainant has clearly stated that the police shown the photographs of both the petitioner and other accused.

9. Though Revisional Court cannot sit in the arm chair of the appellate court and re-appreciate the evidence, however, while exercising its jurisdiction, it can find out as to whether there is perversity in the appreciation of evidence. On a reading of the material documents, this Court finds that there is a perversity in the appreciation of evidence by the trial court and re-appreciation of evidence by the Appellate Court. The prosecution failed to prove its case that the accused/petitioner has committed the charged offence. P.W.3 identified the petitioner, in the absence of identification parade and also non-examination of the Magistrate, which is fatal to the case of the prosecution. The appellate court is a fact finding court and it should have re-appreciated the



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evidence independently and should have rendered independent findings regarding the commission of offence. A reading of the judgment of the appellate court reveals that, the appellate court also failed to re-appreciate the evidence. Therefore, this Court finds that there is a perversity in the appreciation of evidence by both the Courts below that the accused has committed the offence. The accused are not known to the defacto complainant. She has never seen the accused before the occurrence. If any stranger/unknown person is alleged to have committed the offence, identification of the accused is mandatory. But, in this case, proceedings/manner of the identification itself doubtful. The prosecution neither produced the report of the Magistrate nor examined the said Magistrate. Therefore, under these circumstances, this Court finds that, there is a ground to interfere with the judgment of both the Courts below. Judgment of both the Courts below are liable to be set aside.

10. In view of the above, the judgment dated 07.03.2020 passed in C.A.No.162 of 2018 on the file of the V Additional District and Sessions Judge, Coimbatore, confirming the judgment dated 13.04.2018 passed in C.C.No.465 of 2013 on the file of the Judicial Magistrate No.VI, Coimbatore are set aside. Accordingly, the Criminal Revision Case is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.VI,
Coimbatore.
2. The V Additional District and Sessions Judge,
V Additional District and Sessions Court,
Coimbatore.
3. The Inspector of Police,
Peelamedu Police Station,
Coimbatore.

4.The Public Prosecutor,High Court, Madras.
+1 cc to Mr. C.D.Sugumar, Advocate Sr.NO. 53039

CRL.R.C.No.1226 of 2020
and Crl.M.P.Nos.8575 & 8576 of 2020

MG(CO)

A.SK(28.02.2022)