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BAIL SLIP

The Petitioner/Accused viz., Gowtham, S/o.Muthaiya was directed to be released on bail vide order dated 18.11.2014 in Crl.MP.1 of 2014 in Crl.RC.1184 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.R.C.NO.1184 OF 2014

Gowtham
S/o.Muthaiya,

... Petitioner

Vs.

State
Represented by
The Inspector of Police,
Sooramangalam Police Station.

... Respondent

Prayer:

Revision petition filed under Section 397 r/w 401 of Cr.P.C. pleased to set aside the order passed in Criminal Appeal No.5 of 2013 dated 23.04.2013 by the II Additional District and Session Judge, Salem confirming the conviction and sentence passed by the Judicial Magistrate No.II, Salem in C.C.No.413 of 2011, dated 10.12.2012, u/s 379 IPC to undergo rigorous imprisonment for 2 years.

For Petitioner : M/s.Y.Kavitha

For Respondent : Mr.L.A.J.Selvam
Government Advocate (Crl. side)

O R D E R

(The case has been heard through video conferencing)

On 25.06.2011, P.W.1 went to the Sooramangalam Police Station and when P.W.6 viz Ravichandran, the Sub Inspector of



Police was on duty, he lodged a complaint to the effect that on 20.05.2011 pursuant to his official work at about 2.00 p.m. opposite to railway junction, he had parked his Hero Honda Splendor bearing Reg. No. TN30F4896 near the Railway Junction Hotel and when he came back after 30 minutes after having his lunch, he found his motorcycle missing. On such complaint, a case in Crime No.797 of 2011 was registered u/s.379 IPC. Thereafter, P.W.7 took up the case for investigation and filed a final report proposing the petitioner / accused guilty of the offence u/s.379 IPC. The learned Judicial Magistrate No.II, Salem, took up the case on file in C.C.No.413 of 2011 and upon summoning to the petitioner and furnishing copies u/s. Section 207 Cr.P.C., the accused denied the charges and stood trial.

2. Thereafter, the prosecution examined P.W.1 to P.W.7 and marked Ex.P1 to Ex.P10. The Hero Honda Splendor motorcycle which was recovered from the accused was also marked as MO1.

3. Upon being questioned about the adverse evidence on record and circumstances u/s. 313 Cr.P.C., the accused denied the same. However, no oral or documentary evidence let in on behalf of the defence. The trial, therefore proceeded to hear the learned Additional Public Prosecutor for the prosecution and the learned counsel for the accused. The trial Court came to the conclusion that P.W.1 is the owner of the motorcycle had identified the motorcycle recovered. When P.W.7 was checking the road, by chance, he was able to intercept the accused and on his voluntary confession totally six (6) motorcycles were recovered from the backyard of the house. Therefore, the admissible portion of confession leading to the recovery, seizure mahazar and identification of the motorcycle by the owner / P.W.1., the trial Court held that the offence is proved beyond reasonable doubt and found the petitioner / accused guilty of the offence u/s.379 IPC and imposed punishment of two (2) years Rigorous Imprisonment.

4. Aggrieved by the same, the petitioner / accused filed an appeal in Crl.A.No.5 of 2013 on the file of the learned II Additional District and Sessions Judge, Salem and by judgment dated 23.04.2013 and after independently appreciating the evidence on record, the learned Appellate Judge found that then in the case of theft, there will not be any other evidence but recovery of the property which connects the accused to the crime. That with evidence of P.W.1 and P.W.7/the Investigating Officer proved the charge against the petitioner / accused. After holding so, the learned Judge confirmed the conviction and sentence imposed by the trial Court. Aggrieved by the same, the present Revision is laid before this Court.



5. Heard Mrs.Y.Kavitha, the learned counsel appearing on behalf of the petitioner and Mr.L.A.J.Selvam, the learned Government Advocate (Crl. Side) appearing on behalf of the prosecution.

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6. Taking this Court to the evidence of the mahazar witness as well as the Investigating Officer, the learned counsel for the petitioner points out that this the case where the conviction is made only on the basis of recovery. As far as the recovery is concerned, there is material contradiction as to the place of recovery. In one place, it is mentioned as if the vehicle was recovered from the workshop of the Parasuraman, however, the observation mahazar says that the vehicle was recovered at the backyard of the house of the accused. In this connection, the learned counsel would submit that admittedly the prosecution on the same date pursuant to the confession of the petitioner / accused had recovered this motorcycle and the petitioner / accused was prosecuted in six (6) different cases pursuant to the same recovery. However, in respect of the six cases, four criminal Appeals preferred in C.A.No.2 of 2013, C.A.No.3 of 2013, C.A.No.4 of 2013 and C.A.No.7 of 2013 were all allowed vide judgment dated 23.04.2013 by the learned II Additional District and Sessions Judge, Salem in respect of C.C.No.410 of 2011, C.C.No.411 of 2011, C.C.No.412 of 2011 and C.C.No.415 of 2011 arising out of the same transaction. However, in respect of the two cases alone, the conviction was confirmed. The learned counsel would further submit that the manner of the charge and proof that including the delay in complaint are same and similar in all the 6 cases therefore when the accused has been acquitted on the ground that there is material contradictions in respect of the recovery which is the similar basis of conviction, this Court shall intervene in the present case also in exercise of its Revisionary Power.

7. Opposing the said submission, the learned Government Advocate (Crl. Side) appearing on behalf of the prosecution would submit that the petitioner is a habitual offender. Apart from the above four cases acquitted, there are sixteen (16) cases against him, in which, he has been convicted in about 14 cases, which shows that the accused is an incorrigible offender and that the offence has been proved by recovery. Merely because there is discrepancy in the recovery evidence as to the place of recovery, the same should not be considered as material and it warrants no interference of this Court to exercise revisionary jurisdiction and prays dismissal of the Revision.

8. I have considered the rival submissions made on behalf of both sides. I have gone through the material evidence on record.



9.As contended by the learned counsel for the petitioner, there is material contradiction with regard to the recovery itself which is the sole basis of the conviction in the present case. The place of recovery as per the admissible portion of confession, which is Ex.P8 is that he has kept the vehicles in his house, as per the evidence of Mahazar witnesses P.W.4 and P.W.5, the place of recovery was not at all mentioned. As per the evidence of the Investigating Officer, the motorcycle was seized from the backyard of the house of the accused in Selaiyamman Nagar. Vazhapadi Therefore, since there is material contradiction of the witnesses and the seizure mahazar, the same reason which was adopted by the learned II Additional District and Sessions Judge, Salem, in respect of the recovery of the other four cases would also apply to this case. Therefore, the Lower Appellate Court even while acquitting the accused in the four other connected cases convicted the petitioner in this case alone. Therefore, I find this is the case that needs interference of this Court in exercising its Revisional jurisdiction.

10.In view of the material contradictions as to the manner of recovery, the accused is acquitted granting the benefit of doubt. This Criminal Revision Case stands allowed accordingly. The judgment of the learned Judicial Magistrate No.II, Salem dated 10.12.2012 in C.C.No.413 of 2011 and the learned II Additional District and Sessions Judge, Salem in C.A.No.5 of 2013 dated 23.04.2013 are set aside. Fine amount any paid by the accused to be refunded. The bail bonds if any executed by the petitioner shall stand cancelled. The Registry is directed to transmit the original records if any, to the respective Courts forthwith. Consequently, the connected miscellaneous petition if any is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.II, Salem

2.The II Additional District and Sessions Judge, Salem.



3. The Chief Judicial Magistrate,
Salem (For information).

4. The Public Prosecutor
High Court of Madras

5. The Superintendent,
Central Jail, Coimbatore.

6. The Inspector of Police,
Soora Mangalam Police Station.

Copy To

The Section Officer,
Criminal Section, High Court,
Madras.

+1cc to M/s.Giridhar & Sai, Advocate, S.R.No.3735

Cr1.R.C.No.1184 of 2014

PMK (CO)
PM/17/03/2022