



BAIL SLIP

The Petitioner/Accused namely Umesh, Male, 29 Years, S/o.Bala Ravindran was directed to be released on Bail in and by the Order of this Court dated 20/08/2014 and made in CrI.M.P.No.1 of 2014 in CrI.R.C.No.828 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

CORAM:

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.R.C.NO.828 OF 2014

Umesh

... Petitioner

Versus

The State Rep. by
The Inspector of Police,
CCB, St.Thomas Mount Police Station,
Crime No.145 of 2010

... Respondent

PRAYER:-

Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to set aside the order, dated 15.07.2014 made in C.A.No.5 of 2014, on the file of the learned Principal District and Sessions Judge, Thiruvallur in confirming the judgment, dated 30.12.2013 made in C.C.No.115 of 2012 on the file of the learned Judicial Magistrate No.I, Poonamallee and allow the above Criminal Revision.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.L.Baskaran
Government Advocate (CrI. Side)

ORDER

This Criminal Revision Case in CrI.R.C.No.828 of 2014 is filed by the petitioner/accused, namely Umesh, S/o.Bala Ravindran, aggrieved by the judgment of the learned Judicial



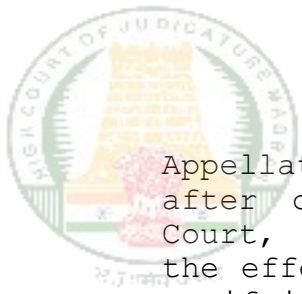
Magistrate No.I, Poonamallee in C.C.No.115 of 2012, whereby, he was convicted for the offences under Sections 419, 420, 468, 471 and 380 of the Indian Penal Code and was imposed with the punishment of one year Simple Imprisonment and the judgment of the learned Principal Sessions Judge, Thiruvallur, dated 15.07.2014 in CrI.A.No.5 of 2014, thereby, dismissing the appeal filed by the petitioner and confirming the conviction and sentence imposed by the Trial Court.

2. P.W.1, Murugesan is working as Assistant General Manager in the concern in the name and style of 'Satya Agencies', which is in the business of selling home appliances. While so, on 27.08.2010, the petitioner/accused drove to the showroom in Honda City Car and came into the shop and purchased a Sony L.C.D T.V and Preethi cooker for a sum of Rs.17,800/- and gave a credit card, bearing serial No.4607173980030690 for a sum of Rs.17,800/- and left the showroom hastily. However, on the next day only, they received a report from the bankers about the payment declining report and found that the entire credit card was a bogus and they also found a laptop kept near the counter for billing purpose was also missing and therefore, they lodged a complaint.

3. Upon the complaint of P.W.1, a case in Cr.No.145 of 2010 was registered and was taken up for investigation by P.W.11, the Inspector of Police and after completing the investigation, he laid a chargesheet proposing the petitioner/accused guilty of the above said offences. Upon being questioned, the petitioner/accused denied the charges and stood trial.

4. The prosecution, thereafter, examined P.Ws.1 to 11 and marked Exs.P-1 to P-10 and produced Mos.1 and 2. Upon being questioned about the material evidence on record under Section 313 of Code of Criminal Procedure, the petitioner/accused denied them as false. Thereafter, no evidence was let in on behalf of the defence and Trial Court, therefore, proceeded to hear the learned Assistant Public Prosecutor on behalf of the prosecution and the learned Counsel for the petitioner/accused and by a judgment, dated 20.12.2013 found that the evidence of P.W.1, identifying the petitioner/accused coupled with the recovery from the accused and the prosecution proven that the credit card, being a fake one and relying upon the seizure mahazar, Ex.P-3 and the admissible portion of the confession leading to the recovery held that the prosecution proved the offences under Sections 419, 420, 468, 471 and 380 of the Indian Penal Code beyond doubt and sentenced the petitioner/accused as above.

5. The petitioner/accused, aggrieved by the above judgment of the Trial Court, preferred CrI.A.No.5 of 2014 on the file of the learned Principal Sessions Judge, Thiruvallur. The



Appellate Court, after independently appraising the evidence and after considering the conclusions and findings of the Trial Court, more specifically considering the evidence of P.W.1 to the effect that the credit card given by the petitioner/accused, as if it is a credit card given by I.C.I.C.I bank, as forged and bogus one and considering the recovery of the Laptop stolen by the accused and seizure of the Honda City Car used by the petitioner/accused, confirmed the conviction and sentence imposed by the Trial Court. Aggrieved by the same, the present Revision Case is laid before this Court.

6. Heard Mr.C.Prabakaran, learned Counsel for the petitioner and Mr.L.Baskaran, learned Government Advocate (Criminal Side).

7. The learned Counsel for the petitioner would take this Court through the evidence of P.W.1 and submitted that it can be seen from the evidence of P.W.1, there is no any concrete or clinching material which can connect the petitioner/accused to the offence and would further submit that the recovery made is artificial and unbelievable and the recovered gadgets/ appliances which are available in the open market and therefore, based on the recovery alone convicting the petitioner/accused will not be safe and the petitioner should be given the benefit of doubt. He would further submit that there is delay in lodging the complaint which would also show that all was not well with P.W.1 and his concern and the complaint is an after thought. He would further submit that without any proper investigation, just because the petitioner was a Srilankan national, so as to close the files, P.W.11, investigating officer, without any evidence whatsoever, has roped in the petitioner as accused in this case and therefore, this Court should interfere with the findings of the Trial Court as well as the lower Appellate Court in exercise of the revisional jurisdiction as the findings result in grave miscarriage of the justice to the petitioner and his consent.

8. The learned Counsel for the petitioner also submits that the said Satya Agencies, had installed C.C.T.V in its own premises and the same was very much available and the same would have been the best and clinching evidence to show that the accused had, as a matter of fact, came to the premises at the date and time of occurrence and took away the articles. When the investigation has miserably failed to let its hands on the best evidence available, the findings of the Trial Court can adverse at best be considered a presumption and therefore, the petitioner/accused is entitled for acquittal.

9. Opposing the above said submissions, the learned Government Advocate (Criminal Side) appearing on behalf of the prosecution would submit that in this case, P.W.1 has identified the accused. The accused is a person who is involved in similar



offences and as a matter of fact, there are six similar other cases pending against him. It is while investigating in a connected case, the accused was arrested and that is how MO.1 is recovered from him and this case. As a matter of fact, the recovery has been duly proved by the prosecution and there is no iota of doubt whatsoever in the case of the prosecution. Further, the defence did not cross-examine P.W.1, who is the best person to depose whether there was C.C.T.V footage or not and whether the C.C.T.V images were stored beyond period of 24 hours or not. Production of C.C.T.V footage was not only mode to which the prosecution should resort to for proving the case. In this case, the prosecution has proved the case otherwise and therefore, he would submit that the contentions of the learned Counsel for the petitioner does not deserve acceptance.

10. I have considered the rival submissions made on behalf of the both sides. I have gone through the material evidence on record and the judgments of the Trial Court as well as the lower Appellate Court. In this case, I am unable to agree with the submissions made on behalf of the learned Counsel for the petitioner. Firstly, apart from the articles he purchased by using the fake credit card, the petitioner/accused also stolen the Lenovo Laptop, which was used by P.W.1's concern and the same is recovered from the accused and the serial number has been matched by the prosecution and therefore, the contention that these articles can be procured from the open market is without any merits. Similarly, the recovery has been duly proved by the prosecution. P.W.1 was able to identify the accused. The prosecution has proved that the credit card is a bogus one and a bogus name has been used by the petitioner/accused. The Honda City Car used by the petitioner/accused was also recovered and produced before the Trial Court. In view of the overwhelming evidence on record I have no hesitation in holding that the conviction of the petitioner/accused by the Trial Court as well as the first Appellate Court is in accordance with law. The petitioner/accused is also involved in six other cases of similar nature and the finding of guilt does not call for any interference by this Court.

11. On the question of sentence, the learned Counsel submitted that apart from being in prison for some days, the petitioner, being a Srilankan national, was detained in the camp and he has undergone direct and indirect incarceration and prayed that the same may be taken into account. Considering the said submissions of the learned Counsel, I am inclined to reduce the sentence imposed by the Trial Court as well as the first Appellate Court from the period of one year to that of six months.



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12. The Criminal Revision is partly allowed, as indicated above.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

grs

To

1. The Principal District and Sessions Judge,
Thiruvallur.
2. The Judicial Magistrate No.I,
Poonamallee.
3. The Chief Judicial Magistrate,
Tiruvallur. (For Information)
4. The Inspector of Police,
CCB, St.Thomas Mount Police Station,
Tiruvallur District.
5. The Superintendent,
Central Prison,
Puzhal, Chennai.
6. The Public Prosecutor,
Madras.

Copy To:-

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

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.1748

CRL.R.C.NO.828 OF 2014

PL(CO)
PBS/11/02/2022