



Bail Slip

The Petitioner/Accused Viz., Mr.Vijay, Male, Aged 33 Years, S/o.Jambu @ Sampath was released on bail as per order of this Court dated 05/09/2017 in CrI.M.P.No.10824 of 2017 in CrI.R.C.1140/2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.1140 of 2017

Vijay

... Petitioner

Vs.

State by
Inspector of Police,
Pallapatti Police Station,
Salem District.
[Crime No.532 of 2010]

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records of the learned II Addl. District and Sessions Judge, Salem in C.A.No.14 of 2017 dated 23.06.2017 confirming the judgment passed passed in C.C.No.163 of 2016 dated 07.03.2016 by the learned Judicial Magistrate No.2, Salem and set aside the same.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The Criminal Revision Petition filed to set aside the conviction imposed in the judgment dated 23.06.2017 made in C.A.No.14 of 2017 on the file of the learned II Additional District and Sessions Judge, Salem, confirming the judgment dated 07.03.2016 made in C.C No.163 of 2016 on the file of the learned Judicial Magistrate No.2, Salem.



2.The gist of the case is that P.W.1, who was working as Office Assistant in Bethel Agricultural Fellowship, Danishpet, Salem was proceeding to her native at Madurai along with her husband. On 18.04.2010, at about 4.00 p.m., they were in the new bus stand at Salem, her husband went few steps ahead to find out a seat for her in the bus, at that time, a person from the behind snatched the Thali chain of P.W.1/victim and ran away. P.W.1/victim raised alarm, one Vadivelu and Ramu chased him, found him in Edapady bus where he initially denied and thereafter, when he was beaten, he produced the Thali chain. P.W.1/defacto complainant, P.W.6/Vadivel and Ramu took the petitioner/accused to the Police Station, lodged a complaint and produced the Thali chain. P.W.8/Sub-Inspector of Police received the complaint, registered a FIR/Ex.P3, thereafter the accused was arrested and produced before the Magistrate for remand along with the property. The FIR was placed before P.W.9/Investigating Officer, who visited the scene of occurrence, prepared observation mahazar, rough sketch, examined the witnesses, recorded the statement and thereafter filed charge sheet. During trial, P.W.1 to P.W.9 were examined, Ex.P1 to P6 and M.O.1 were marked. On conclusion of the trial, the Trial Court convicted the petitioner for a period of three years which was confirmed by the Lower Appellate Court. Against which, the present revision petition is filed.

3.The contention of the learned counsel for the petitioner is that normally in a case of chain snatching, there would be abrasion or small injury found around the neck, but in this case the victim admits that there is no injury on her neck. Further, P.W.1 states that it was Vadivel/P.W.6 and one Ramu who secured the petitioner from another bus, P.W.6 is none other than a fruit vendor in the bus stand who is at the mercy of the Police, the other witness, Ramu not examined. He further submitted that her husband who went few steps ahead, not seen the occurrence, P.W.2 states about the incident. The other witnesses, namely, P.W.3 to P.W.5 who were on patrol duty admit that they come after the incident. In this case admittedly none had seen the petitioner snatching the chain. He further submitted that on that day the petitioner, who came out on bail in connection with a previous case and reporting before the respondent police, was proceeding in a bus and he is falsely implicated in this case. Further, in this case though the occurrence is said to have taken place on 18.04.2010, there is no mahazar to show the seizure of the property/M.O.1 and in Form 95, it is seen that the property was sent to the Court and CP was obtained only on 05.05.2010. There is no reason given as to in whose custody



M.O.1 was retained. These factors not considered by the Trial Court and the Lower Appellate Court. Hence, he sought for acquittal.

4.The learned Additional Public Prosecutor submitted that the petitioner is a habitual offender, earlier to this occurrence the petitioner was involved in a case of offence under Section 395 IPC in the year 2008. The petitioner committed chain snatching in the public place, P.W.6 and the other public caught him red handed in the bus stand, handed over to the police and from his pocket, M.O.1, 3½ Sovereigns of Thali chain was recovered. P.W.1/defacto complainant is working as an Office Assistant, P.W.2/husband of the defacto complainant is a Teacher and they have no reason to falsely implicate the petitioner. P.W.1 and P.W.2 were proceeding to Madurai, at that time, the occurrence took place in the Salem new bus stand, they lodged a complaint and P.W.8 registered the FIR. P.W.3 to P.W.5 are the Police Personnels, who were on patrol duty, reached the scene of occurrence immediately. P.W.7 is the witness in whose presence observation mahazar and rough sketch prepared. P.W.9/Investigating Officer on completion of investigation filed the final report listing witnesses and documents. The Trial Court on examination of the witnesses and materials produced, rightly convicted the petitioner which was confirmed by the Lower Appellate Court. He further submitted that the occurrence took place at 4.00 p.m., the accused was caught red handed at 4.30 p.m., the complaint was lodged immediately and there is no delay or any reason to falsely implicate the petitioner. Hence, he prayed for dismissal of the revision petition.

5.Considering the submissions made and on perusal of the materials placed before this Court, it is seen that the petitioner was caught red handed in the new bus stand, Salem by P.W.6/Vadivel and one Ramu. P.W.1 and P.W.2 were proceeding to Madurai, at that time, Thali chain of P.W.1 was snatched away by the petitioner. The petitioner was caught from Edapady bus and from him M.O.1 chain was recovered. P.W.3 to P.W.5, Police Patrol Personnel reached the scene immediately, thereafter along with the accused and chain, complaint was lodged. Though on the face of it, it would appear to be very proximate, on perusal of the evidence and records, it is seen that P.W.1 states that he found the accused and questioned him, on the other hand, P.W.6 and Ramu caught the petitioner and they produced him. P.W.6 admits that he is a fruit vendor in the bus stand who is at the mercy of the police, the other witness Ramu not examined in this case. Further, the property not seized by way of mahazar, Form 95 for the seizure reached the Court without property on



19.04.2010, it was returned with an endorsement, produced form 95 along with the property and the property had finally reached the Court only on 05.05.2010. It is further seen that there have been corrections in the date. P.W.1 and P.W.2 have no axe to grind against the petitioner. The occurrence took place at 4.00 p.m., the petitioner was produced along with the chain before the respondent police by P.W.1 and P.W.6 at 4.30 p.m. Though there may be some delay in producing M.O.1 before the Trial Court, this Court feels that on the facts it would not affect the case and hence, there is no infirmity in the order passed by the Trial Court which confirmed by the Lower Appellate Court.

6.Since after this case the petitioner was not involved in similar kind of offences, he has to take care of his elderly parents, he is the sole breadwinner of the family and the petitioner, already undergone incarceration for a period of 6 months and 17 days, this Court is inclined to reduce the sentence imposed by the Courts below from three years simple imprisonment to that of the period of incarceration already undergone by the petitioner.

7.In the result, the judgment, dated 07.03.2016 in C.C.No.163 of 2016, passed by the learned Judicial Magistrate No.2, Salem which was confirmed by the judgment dated 23.06.2017 passed by the learned II Additional District and Sessions Judge, Salem in C.A.No.14 of 2017 is hereby modified and the sentence imposed by the Courts below from three years simple imprisonment to that of the period of incarceration already undergone by the petitioner. Accordingly, this Criminal Revision Petition stands partly allowed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

cse
To

1.The Inspector of Police,
Pallapatti Police Station,
Salem District.



2.The Judicial Magistrate No.II,
Salem.

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

4.The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.1140 of 2017

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srg 25/04/2022