



Crl.R.C.No.876 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2022

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THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.876 of 2019

1. Vignesh

2. Manoharan

... Petitioners

Vs.

The State represented by
The Sub-Inspector of Police,
Kattumannarkoil Police Station,
Kattumannakoil,
Cuddalore District.

(Crime No.224 of 2018)

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to call for the records and set aside the conviction Judgments made in Crl.A.No.19 of 2019 dated 26.07.2019 by the Hon'ble II Additional District and Sessions Court, Chidambaram, Cuddalore District and in C.C.No.62 of 2018 dated 22.01.2019 by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, Cuddalore District.

For Petitioners : Mr.G.Pugazhenth

For Respondent : Mr.A.Gopinath

Government Advocate (Crl.Side)



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ORDER

WEB COPY This Criminal Revision case has been filed to set aside the conviction Judgment made in Crl.A.No.19 of 2019 dated 26.07.2019 by the Hon'ble II Additional District and Sessions Court, Chidambaram, Cuddalore District, thereby confirmed the order of conviction passed in C.C.No.62 of 2018 dated 22.01.2019 by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, Cuddalore District.

2. The case of the prosecution is that on 11.06.2018 at about 08.00 a.m, when the respondent Police and their team were on regular patrol, the petitioners came by a vehicle viz., Mahindra Tractor bearing registration number TN 31 AR 5707 and the Tipper bearing registration number TN 31 AM 3350. The first petitioner was driving the vehicle and the second petitioner was travelling in the vehicle. On seeing the respondent, the petitioners ran away from the scene of occurrence. Thereafter, it was found that the said tipper contained one unit of river sand and they also damaged the drinking water resources in the river Kollidam. Hence the complaint.



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3. On receipt of the information about the occurrence, the respondent registered an FIR in Crime No.224 of 2018 for the offences under Sections 379, 430 of IPC and Section 21(1) of Mines and Minerals (Development and Regulation Act) 1957. After completion of investigation, the respondent filed a final report and the same has been taken cognizance in C.C.No.62 of 2018 on the file of the Trial Court for the offences under Section 379, 430 of IPC. The Trial Court deleted the offence under Section 21(1) of Mines and Minerals (Development and Regulation Act) 1957. In order to prove the charges, the prosecution examined P.W.1 to P.W.3 and marked Exs.P1 to P3 and also produced material objects 1 and 2.

4. On perusal of oral and documentary evidence, the Trial Court convicted the petitioners for the offence under Section 379 of IPC and sentenced them to undergo two years simple imprisonment and to pay a sum of Rs.5000/- each in default, undergo two months simple imprisonment and for the offence under Section 430 of IPC, to undergo one year simple imprisonment and to pay a sum of Rs.5000/- each in default, undergo two months simple imprisonment and ordered the sentence to run concurrently.

5. Aggrieved by the same, the petitioners preferred an appeal and the



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same was dismissed by the Appellate Court, confirming the order passed by the Trial Court. Hence, this revision.

6. The learned counsel for the petitioners submitted that the prosecution failed to prove the charges for the offence punishable under Section 379 of IPC, since no ingredients are available to attract the offence under Section 379 of IPC. There is no evidence to prove that the petitioners had committed theft of river sand by damaging the water resources of the river system. Even according to the case of the prosecution, the petitioners were in possession of river sand in the Tractor. The prosecution failed to prove, from where the said river sand was taken and by whom it is taken. He further submitted that P.W.1 to P.W.3 are Police officials and no independent witness was examined by the prosecution. Though, the tractor was allegedly seized in the road, no independent witness was examined by the prosecution. He also submitted that neither any complaint is lodged by anybody nor the special report is submitted by any of the Police officers attached to the respondent. In order to prove the charges for the offence under Section 430 of IPC, the prosecution failed to examine any witness attached with the Public Works Department under whom the river Kollidam is being maintained.



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7. In support of his contention, he relied upon the Judgments of this Court reported in **2020 0 CrLJ 2860** in the case of ***"M.Thirumoorthi Vs. The State represented by Sub-Inspector of Police, Coimbatore Railway Police, Coimbatore,"*** in **2019 (3) MLJ (Crl) 420** in the case of ***"K.K.S.M.Thoulathkhan Baqavi @ Sheik Mohammed and Others Vs. State represented by the Inspector of Police, Flower Bazaar Police Station, Chennai District"*** and also in **2021 (3) MLJ (Crl) 632** in the case of ***"B.Krishnan Vs State Represented by its Inspector of Police, CBCID, Nilgiris District"***.

8. The learned Government Advocate (Crl.Side) submitted that after completion of investigation, the respondent filed a final report for the offences punishable under Sections 379 and 430 of IPC and Section 21(1) of Mines and Minerals (Development and Regulation Act) 1957. Even then, the Trial Court rightly had taken cognizance for the offences under Sections 379 and 430 of IPC. The prosecution had examined P.W.1 to P.W.3 and marked Exs.P1 to P3. The prosecution also produced material objects 1 and 2, in order to bring the charges into home. All the grounds raised by the petitioners were duly considered by the Trial Court as well as the Appellate Court. Both the Courts concurrently held that the petitioners had committed offences punishable under



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Sections 379 and 430 of IPC. Therefore, the orders impugned does not warrant any to interference by this Court.

9. Heard Mr.G.Pugazhenth, learned counsel appearing for the petitioners and Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the respondent.

10. The brief case of the prosecution is that on 11.06.2018, the petitioners came by Mahindra Tractor bearing registration number TN 31 AR 5707 and the Tipper bearing registration number TN 31 AM 3350, driven by the first petitioner and travelled along with the second petitioner. When the Police officials intercepted the Tractor, it was found that the petitioners were in possession of one unit of river sand. Though, the respondent filed a final report for the offences punishable under Sections 379 and 430 of IPC and Section 21(1) of Mines and Minerals (Development and Regulation Act) 1957, the Trial Court had taken cognizance only for the offences punishable under Sections 379 and 430 of IPC. Admittedly, the prosecution had examined P.W.1 to P.W.3 and all the witnesses are Police officials. No independent witness was examined by the prosecution.

11. The learned counsel for the petitioners vehemently contended that



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the person who seized the vehicle had registered the FIR and no independent witness was examined by the prosecution. Therefore, it cannot be said that the respondent had conducted a fair investigation. In support of his contention, he relied upon the Judgment of this Court reported in **2019 (3) MLJ (Crl) 420** in the case of ***“K.K.S.M.Thoulathkhan Baqavi @ Sheik Mohammed and Others Vs. State represented by the Inspector of Police, Flower Bazaar Police Station, Chennai District”***. This Court held that the officer who had registered the FIR had also conducted the investigation and has taken the statements of the police officers of his own Police Station and thereafter has proceeded to file a final report. By no stretch, this can be called as a fair investigation and the fundamental principles of criminal law that the informer and the investigator must not be the same person will squarely apply in this case.

12. Further, the respondent registered an FIR neither on the complaint lodged by any third person nor on the special report submitted to the respondent. Therefore, this Court has no hesitation to say that the investigation done by the respondent is not a fair one. Now, the petitioners were convicted for the offences under Sections 379 and 430 of IPC. In order to prove the charge for the offence under Section 379 of IPC, it is settled law that the



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prosecution must to establish essential factors, that the accused had dishonestly taken the property, that the property was movable, that the property was taken out of the possession of another person/complainant, that it was taken without the consent of that person/complainant and that there must be some moving of the property in order to accomplish the taking of it. In the light of the said principle, it has to be seen whether the prosecution had proved the charge for the offence under Section 379 of IPC or not. Even according to the case of the prosecution, the tractor and the tipper were intercepted by the respondent, while it was proceeding near Therkiruppu Tasmac shop, Kattumarkoil and found that the tractor contained one unit of river sand. There was no independent witness for seizure and as such P.W.1 and P.W.2, who are the Police officials of the respondent, stood as witnesses for the seizure and arrest. The prosecution failed to establish that the river sand was stolen from the river and was not purchased from anybody. The prosecution proved that the sand is a river sand, by the certificate issued by the Public Works Department dated 27.06.2018, which was marked as Ex.P3.

13. A perusal of Ex.P3 revealed that the tipper contained one unit of



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river sand. However, the prosecution failed to establish that the said river sand was stolen by the petitioners from the river. When it being so, the prosecution failed to prove the offence under Section 379 of IPC. That apart, the prosecution also failed to place any evidence to establish that the petitioners had trespassed into the Government land viz, The river, Kollidam and had stolen the river sand. Further, the prosecution also failed to establish that they illegally transported the same and thereby committed the offence. However, the Trial Court rightly deleted the charge for the offence under Section 21(1) of of Mines and Minerals (Development and Regulation Act) 1957. Only on assumption, both the Courts below held that the prosecution proved the charges for the offences under Section 379 of IPC. Insofar as the offence under Section 430 of IPC is concerned, the prosecution failed to prove the charge by any evidence.

14. In this regard, it is relevant to extract the provisions under Section 430 of IPC, which is as follows:-

“430. Mischief by injury to works of irrigation or by wrongfully diverting water.—Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be



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punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both”.

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15. Thus, it is clear that no one was examined by the prosecution, to prove the charge under Section 430 of IPC. Without considering the above aspects, both the Courts below wrongly convicted the petitioners for the offences punishable under Sections 379 and 430 of IPC.

16. In view of the above, the conviction Judgments made in Crl.A.No.19 of 2019 dated 26.07.2019 by the Hon'ble II Additional District and Sessions Court, Chidambaram, Cuddalore District and in C.C.No.62 of 2018 dated 22.01.2019 by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, Cuddalore District, are hereby set aside. The fine amount, if any, paid by the petitioners shall be refunded to them. The bail bond, if any, executed by the petitioners shall stand cancelled.

17. Accordingly, this Criminal Revision case stands allowed.



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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

1. The II Additional District and Sessions Court, Chidambaram, Cuddalore District.
2. The District Munsif cum Judicial Magistrate, Kattumannarkoil, Cuddalore District.



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G.K.ILANTHIRAIYAN, J

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