

Bail Slip

The Petitioner/Accused namely Mohan aged 47, male S/o.Sanmugam, was released on bail dated 28/04/2017 made in CrI.M.P.5643/2017 in CrI.R.C.No.628/2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.628 of 2017

Mohan

... Petitioner/Accused

Vs.

The State represented by,
The Inspector of Police,
Railway Police Station,
Salem District.
(Crime No.112 of 2015).

... Respondent/Complainant

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the judgment dated 13.02.2017 made in CrI.Appeal No.108 of 2016 on the file of the First Additional District and Sessions Judge, Salem, in confirming the judgment dated 19.10.2016 made in C.C.No.69 of 2015 on the file of the Judicial Magistrate Court No.3, Salem and allow the above Criminal Revision.

For Petitioner :Mr.D.Anbarasan

For Respondent :Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

The petitioner was convicted by the learned Judicial Magistrate No.III, Salem (trial Court), vide judgment, dated 19.10.2016 in C.C.No.69 of 2015 and sentenced to undergo one year Simple Imprisonment for offence under Section 379 of IPC. As

against the judgment of trial Court, an appeal was preferred by the petitioner before the learned I Additional District and Sessions Judge, Salem (lower appellate Court) in C.A.No.108 of 2016. The lower appellate Court, by judgment, dated 13.02.2017 dismissed the appeal confirming the judgment of the trial Court, against which the present Criminal Revision Case.

2.The gist of the case is that on 30.04.2015, at about 01.00 p.m., PW2/defacto complainant was waiting in Salem junction to proceed to Erode and he place his mobile phone in waiting room connecting charger. At that time, a person/petitioner enquired PW2 about Jollarpet train, PW2 informed that he does not know anything about it. After sometime, PW2 found that his mobile phone placed in waiting room, was found missing. Immediately, he lodged a complaint (Ex.P2) to PW6, the Sub Inspector of Police, attached to the respondent Police. On receipt of the complaint (Ex.P2), PW6 was keeping surveillance over the place, where the mobile phone of PW2 was found missing. At about 05.00 p.m., PW6 found the petitioner and questioned him. Since he gave contradictory version, he was searched by PW6, from his pocket, the black colour Nokia mobile phone (MO1) of PW2 was seized under Seizure Mahazar (Ex.P3) in the presence of PW4 and PW5. In this case, PW1 is the witness for Observation Mahazar (Ex.P1), PW3 is a sweeper, she was cleaning the waiting room situated at platform Nos.3 and 4 at the time of occurrence. PW6 seized MO1, arrested the petitioner and produced him before the concerned Magistrate for remand and on completion of investigation, charge sheet was filed.

3.During trial, on the side of the prosecution, 6 witnesses were examined as PW1 to PW6 and 8 documents were marked as Exs.P1 to P8. On the side of the defence, no witness was examined and no document was marked. The trial Court, on conclusion of trial, convicted and sentenced the petitioner, vide judgment, dated 19.10.2016 in C.C.No.69 of 2015. As against the judgment of the trial Court, an appeal was preferred by the petitioner before the lower appellate Court in C.A.No.108 of 2016. The lower appellate Court, by judgment, dated 13.02.2017 dismissed the appeal confirming the judgment of the trial Court.

4.The learned counsel for the petitioner submitted that earlier, the petitioner was convicted in C.C.No.236 of 2013 by the learned Judicial Magistrate No.III, Salem and undergone five months imprisonment for offence under Section 379 IPC. Likewise, he was convicted by the learned Judicial Magistrate No.VI, Coimbatore in C.C.No.222 of 2016 and undergone three months imprisonment for offence under Section 379 IPC. In the present

case, the petitioner had already undergone two months imprisonment in the concerned prison. He further submitted that after the year 2015, the petitioner not involved in any of the case and not committed any offence similar in nature. Now, he is peacefully living with his family. Hence, the learned counsel prayed this Court to allow this Criminal Revision Case considering the period of incarceration already undergone by the petitioner.

5.The learned Additional Public Prosecutor appearing for the respondent Police submitted that the petitioner is an habitual offender, he was involved in two cases in C.C.No.236 of 2013, on the file of the Judicial Magistrate Court No.III, Salem and C.C.No.222 of 2014, on the file of the Judicial Magistrate Court No.II, Coimbatore. In this case, on 30.04.2015, at about 01.00 p.m., when PW2 was waiting for train to go to Erode, the petitioner came there and picked up a conversation about arrival of Jollarpet train and stolen the mobile phone (MO1) of PW2. PW2 raised alarm, PW3, the Sweeper in waiting room came there and made a search. Unable to find his mobile phone (MO1), PW2 went to the respondent Police Station, lodged a complaint (Ex.P2). On his complaint, FIR (Ex.P6) in Crime No.112 of 2015, for offence under Section 379 IPC was registered by PW6, the Sub Inspector of Police. PW6 came to the scene of occurrence, prepared Observation Mahazar (Ex.P1), Rough Sketch (Ex.P7) in presence of PW1 and he was keeping a watch over the area on the identification given by the PW2 about the petitioner. The petitioner was found coming out from the wine shop and when he was questioned by PW6, he gave contradictory version and got suspicious. When his pocket was searched, the mobile phone (MO1) of PW2 was found and the same was seized under Seizure Mahazar (Ex.P3) in presence of PW4 and PW5. At about 04.45 p.m., the petitioner was arrested and produced before the concerned Magistrate for remand. In this case, within three hours, the FIR (Ex.P6) was registered, the stolen article i.e., mobile phone of the petitioner (MO1) was recovered.

6.He further submitted that the petitioner being a regular offender, no leniency to be given, otherwise he will not commit similar type of offences in future. The trial Court on the materials produced had rightly convicted the petitioner and the same was confirmed by the lower appellate Court. Hence, he prayed for dismissal of this Criminal Revision Case.

7.This Court considered the rival submissions and perused the materials available on record.

8.It is seen that in this case, the petitioner was arrested within few hours from the theft of mobile phone of PW2 (MO1). In the complaint (Ex.P1), PW2 stated about the placing of mobile phone (MO1) for charging in the waiting room at platform Nos.3 & 4 in Salem Junction. PW3 confirmed that PW2 searched his mobile phone (MO1) in waiting room and gave identification of the suspect. PW2 lodged a complaint to PW6, who registered FIR in Crime No.112 of 2015 (Ex.P6), arrested the petitioner, who found in nearby wine shop and seized the mobile phone of PW2 (MO1) from him under Seizure Mahazar (Ex.P3) in presence of PW4 and PW5, prepared Observation Mahazar (Ex.P1) in presence of PW1. The trial Court on perusal of evidence and materials rightly convicted the petitioner and the lower appellate Court on its independent assessment, confirmed the judgment of the trial Court.

9.It is seen that after the year 2015, the petitioner not involved in similar kind of offences. Already, the petitioner had undergone several months imprisonment in two cases in C.C.No.236 of 2013, on the file of the Judicial Magistrate Court No.III, Salem and C.C.No.222 of 2014, on the file of the Judicial Magistrate Court No.II, Coimbatore. As far as this case is concerned, he had undergone two months imprisonment.

10.Considering that the petitioner not involved in similar kind of offences, he has to take care of his family, he is the sole breadwinner of the family and the petitioner already undergone incarceration for two months, this Court is inclined to reduce the sentence imposed by the trial Court from one year Simple Imprisonment to that of the period of incarceration already undergone by the petitioner.

11.In the result, the judgment, dated 19.10.2016 in C.C.No.69 of 2015 passed by the learned Judicial Magistrate No.III, Salem which was confirmed by the judgment dated 13.02.2017 in C.A.No.108 of 2016 by the learned I Additional District and Sessions Judge, Salem is hereby modified and the sentence imposed by the Courts below from one year Simple Imprisonment to that of the period of incarceration already undergone by the petitioner. Accordingly, this Criminal Revision Case is partly allowed.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

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To

- 1.The I Additional District and Sessions Court,
Salem.
- 2.The Judicial Magistrate Court No.III,
Salem.
- 3.The Chief Judicial Magistrate,
Salem.
- 4.The Inspector of Police,
Railway Police Station,
Salem District.
- 5.The Superintendent,
Central Prison,
Coimbatore.
- 6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.D.Anbarasan, Advocate SR.No.25198

Cr1.R.C.No.628 of 2017

SR(CO)
CB(02/05/2022)