



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2022

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.R.C.No.819 of 2017

Selvam ... Petitioner/Accused
Vs.

The State rep. By,
The Sub Inspector of Police,
Peranamallur Police Station,
Thiruvannamalai District.
Crime No.373/2008

... Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., to call for the records and set aside the judgment in Crl.A.No.2 of 2012 dated 23.11.2016 on the file of the learned Sessions Judge, Tiruvannamalai.

For Petitioner : Mr.N.R.Elango (Senior Counsel)
for Mr.R.Vivekananthan

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been filed challenging the judgment of the learned Sessions Judge, Tiruvannamalai dated 23.11.2016 made in Criminal Appeal No.2 of 2012.

2. The petitioner was the accused before the trial Court.

3. The case of the prosecution is that on 20.12.2008, four pieces of 40cc iron rods stored at the commercial complex of Peranamallur Village bus stand belonging to the complainant (who is the contractor) had been found missing. On the complaint given by P.W.1 - Selvaraj, a case was registered in Crime No.373 of 2008 of Peranamallur Police Station by P.W.9 - Sub-Inspector of Police. He prepared the F.I.R. - Ex.P6; after registering the F.I.R., he took up the case for investigation, went to the place of occurrence, prepared observation Mahazar - Ex.P3 and rough sketch - Ex.P7 in the presence of witnesses and thereafter, he enquired the witnesses and recorded their statement; he arrested the accused on 22.12.2018 when he was found carrying the iron rods near Asinapuram Erikarai in a suspicious manner; he enquired the accused and recorded the confession statement given by him in the presence of witnesses. On the basis of confession



statement, he recovered iron rods from him under seizure mahazar - Ex.P8 from the shop of P.W.8 and thereafter, he sent the accused for remand. He filed a charge sheet against the accused under Section 379 IPC.

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4. After the case was taken on file and on being satisfied with the materials available on record, charges were framed against the accused for the offence under Section 379 IPC. When the accused was questioned, he pleaded innocence and claim to be tried.

5. On the side of the prosecution, 9 witnesses were examined as P.W.1 to P.W.9, 8 documents were marked as Exs.P1 to P8 and two materials objects were marked as M.O.1 & M.O.2. When the incriminating materials surfaced in the evidence of the complainant was put to the accused under Section 313 Cr.P.C., the accused denied the same. On the side of the defence, no witness was examined and no document was marked.

6. After concluding the trial and on considering the evidence available on record, the learned trial Judge found the accused guilty for the offence under Section 379 IPC and convicted and sentenced him to undergo Four Months Simple Imprisonment. The appeal filed by the accused challenging the above judgment in C.A.No.2 of 2012 was also dismissed and the judgment of the trial Court was confirmed. Aggrieved over that, the present Revision Case is filed.

7. Heard the learned senior counsel for the petitioner/accused and the learned Government Advocate (Criminal Side) for the respondent State.

8. The learned senior counsel for the petitioner/accused submitted that the complaint was given after P.W.1 saw some of the iron rods in the shop of P.W.8 were missing. P.W.7 - Munian, who is the witness for arrest and enquiry, has stated that after finding some of the iron rods at the shop of P.W.8, P.W.1 has given the complaint; so the arrest and enquiry was not made in the manner as stated by the Investigation Officer; the iron rods were not identified by any of the witnesses; the accused has been falsely implicated in this case, hence, the Revision Case shall be allowed.

9. The learned Government Advocate appearing for the respondent State submitted that P.W.8 has stated in his evidence that the accused has sold the stolen property to him by telling that they are the remainders of the building materials used by him; thereafter, when the accused was arrested, he also gave a confession statement and only on the basis of that, the properties have been recovered and hence, it is right for the trial Judge to find the accused guilty and convict him for the offence under Section 379 IPC.



10. Point for consideration :-

Whether the finding of the guilt of the accused for the offence under Section 379 IPC by the learned Judicial Magistrate II based on the materials available on record is fair and proper?

11. P.W.1 is the complainant. He had given the complaint on the allegation that four of his iron rods kept at the building site were missing. His evidence would reveal that he has seen four pieces of the iron rods two days before 20.12.2008, but when he checked it on 20.12.2008, he found them missing. After searching them in several places, he gave a complaint before the Police on the same day. P.W.7, who is the witness for arrest and recovery, has stated in his evidence that even before the recovery was made at the confession of the accused, he accompanied P.W.1 to search the missing rods and at last, have found some of the rods kept in the shop of P.W.8. Only thereafter, he went to the Police Station and gave Ex.P1 - complaint.

11.1 But the case of the prosecution is that, after the complaint was lodged, during the course of investigation only the stolen properties were found lying at the shop of P.W.8. The evidence of P.W.7 is totally contradicted to the statement of P.W.1 and the Investigation Officer. Despite P.W.1 has given the complaint on 22.12.2008, he has stated in his evidence that he had given the complaint on 20.12.2008 itself. The evidence of P.W.1 itself is in contradiction to his complaint - Ex.P1. The stolen iron rods were four pieces. However, nearly 60 short pieces of iron rods have been recovered under the recovered mahazar. So it is not known whether the stolen property was cut into pieces and handed over to P.W.8.

12. According to P.W.8, he received iron rods of different sizes from the accused but P.W.1 has stated that four pieces of uniform size of the iron rods were found missing. The evidence of the prosecution would show that the recovery was made after arresting the accused and in the presence of the witnesses for recovery. So there is every possibility that the accused could have been connected to some other properties which might have sold by someone to P.W.8. Unless the direct connection of the accused with the property recovered is established, the accused cannot be found guilty for the offence under Section 379 IPC. The self-contradictory evidence of P.W.1, the contradictions found in the evidence of P.W.7 and the Investigation Officer, would make the case of the prosecution suspicious and that would earn a benefit of



doubt in favour of the accused. Since the Courts below have not appreciated the evidence by taking into consideration of the above circumstances, I feel that the judgement warrants interference.

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In the result, this Criminal Revision Case is allowed and the judgment of the learned Sessions Judge, Tiruvannamalai, dated 23.11.2016 passed in Criminal Appeal No.2 of 2012, is hereby set aside.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Tiruvannamalai
- 2.The Judicial Magistrate No.2
Cheyyar.
- 3.The Sub Inspector of Police,
Peranamallur Police Station,
Thiruvannamalai District.
Crime No.373/2008
- 4.The Public Prosecutor,
High Court, Madras.

Copy to:

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

Cr1.R.C.No.819 of 2017

nk(CO)

A.SK(23.02.2022)