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Crl.R.C.No.1340 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.1340 of 2023 and
Crl.M.P.Nos.11074 of 2023

K.S.Sharjun @ Ibrahim

... Petitioner

Vs.

The State Rep. by
the Sub-Inspector of Police,
B-4, Ukkadam Police Station,
Coimbatore.

... Respondent

Prayer : Criminal Revision Petition filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the order and judgement of the learned I Additional District and Sessions Judge of Coimbatore in Crl.A.No.146/2022 on 12.6.2023.

For Petitioner : Mr.M.Dharmarajan

For Respondent : Mr.R.Vinothraja, GA (Crl. Side)

ORDER

Challenging the orders, dated 12.06.2023 in Crl.A.No.146 of 2022 passed by the learned I Additional District and Sessions Judge, Coimbatore, the present Criminal Revision is filed by the accused.

2. The petitioner/accused in C.C.No.236/2016 on the file of the



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learned Judicial Magistrate No.V, Coimbatore was convicted and sentenced on 09.11.2022 as extracted hereunder:

<i>S.No.</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
1	Section 294(b) I.P.C.	Simple imprisonment for three months
2	Section 427 I.P.C.	Simple imprisonment for two years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for two months.
3	Section 506(ii) I.P.C.	Simple Imprisonment for three years

3. This conviction was confirmed by the I Additional District and Sessions Judge, Coimbatore. However the sentence was modified as detailed hereunder:

<i>S.No.</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
1	Section 294(b) I.P.C.	Simple imprisonment for three months
2	Section 427 I.P.C.	Simple imprisonment for two years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for two months.
3	Section 506(ii) I.P.C.	Simple Imprisonment for two years

4. The case of the prosecution in a nutshell is that on 12.01.2016, at 12.00 noon, when the defacto complainant (P.W.1) was



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walking on the road, he saw the accused K.S.Sharjun @ Ibrahim aged 29 years, breaking open the lock of the shop 'Classic agencies' which belongs to him. According to the defacto complainant, the accused trespassed into the shop and damaged the wooden racks and almirah and worth about Rs.5,000/-. When the defacto complainant confronted the accused in this regard, he threatened him with dire consequence. Thereafter, the defacto complainant went to B4 Ukkadam Police station, Coimbatore and lodged a complaint (Ex.P6) with the Police on 13.01.2016. On receiving the complaint from the defacto complainant, Thiru.Balasubramaniyan (P.W.6) Special Sub Inspector of Police registered an FIR in Crime No.62/2016 against the accused and four other persons for the alleged offences under Sections 294(b), 427 and 506 (ii) I.P.C., Thereafter he placed the entire records to Thiru.Velliangiri, Investigating Officer (P.W.7) for investigation. P.W.7 took up investigation on the same day, went to the scene of occurrence and prepared an Observation Mahazar (Ex.P1) and also seized the following articles:

1. Yellow colour Brass lock-1,
2. Wooden Rack -2 and
3. Wooden rack, under the cover of Mahazar (Ex.P2) in the presence of



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the witnesses Suberul Ameer (P.W.2), and Thoubik Husain (P.W.4). He also prepared a rough sketch (Ex.P4). He sent the seized articles under Form 91 to the concerned Court which is marked as Ex.P5. He also took the photographs of the scene of occurrence (Ex.P7). He examined the witnesses and recorded their statements under Section 161 (3) Cr.P.C. Thereafter, he laid a charge sheet before the Judicial Magistrate V, Coimbatore against the accused for the offences punishable under Sections 294(b), 427 and 506 (ii) I.P.C.,

5. In the meanwhile, the accused obtained Anticipatory Bail.

6. The learned Judicial Magistrate issued summons to the accused. Copies of records were furnished to the accused on his appearance, under Section 207 of Cr.P.C., Thereafter charges under Sections 294 (b) 427, 506 (ii) of I.P.C. were framed, read over, interpreted and explained to him for which he pleaded not guilty. Therefore the case was posted for trial.



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7. In order to bring home the guilt of the accused, the prosecution examined seven witnesses and marked Ex.P1 to Ex.P7. When the petitioner / accused was questioned under Section 313 (i) (b) Cr.P.C. with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. However, he did not examine any witness on his side.

8. After analysing the oral and documentary evidence on record, the learned trial Court Judge convicted the accused under Sections 294(b), 327, 506 (ii) and sentenced him as mentioned above. The trial Court further held that the sentence shall run concurrently. Aggrieved over the said Judgment passed by the trial Court, the accused filed an appeal in Crl.A.No.146 of 2022 before the I Additional District and Sessions Judge, Coimbatore. The said petition was dismissed on 12.06.2023, confirming the order passed by the trial Court with modification to undergo Simple Imprisonment for two years instead of three years under Section 506 (ii) I.P.C., against which, the present Criminal Revision is preferred.



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9. Since the learned Government Advocate (Crl. side) appearing for the respondent is having the copies of the entire records, the case is taken up for final hearing at the admission stage itself.

10. Mr.M.Dharmarajan, learned counsel for the petitioner contended that the case should be remitted back to the trial Court and the accused should be given an opportunity to cross examine all the prosecution side witnesses.

11. Mr.R.Vinothraja, learned Government Advocate (Crl. side) appearing for the respondent contended that both the Courts below after appreciating the evidence on record, had rightly convicted the accused and that the present accused did not avail the opportunity to cross examine the witnesses on the day when the witnesses were present in the Court. He also contended that the present petitioner filed a petition under Section 311 Cr.P.C., in C.M.P.No.20912 of 2021 to recall all the prosecution witnesses and the same was dismissed by the trial Court on



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05.10.2021, against which the present petitioner filed a Criminal Original petition before this Court in Crl.O.P.No.20047 of 2022 and the same was dismissed for default on 26.08.2022. Subsequently, he filed another petition in C.M.P.No.47863 of 2022 to restore Crl.O.P.No.20047 of 2022. The said petition was also dismissed for non prosecution. Now the revision petitioner contends that he was not given any opportunity to cross examine the witnesses. Hence, he prayed for dismissal of the revision.

12. In the instant case, apart from the evidence of P.W.1 there are two eye witnesses viz., Sagabudeen (P.W.3) and Mubaarak Ali (P.W.5). P.W.3 had clearly deposed that he saw the accused breaking open the lock of P.W.1's shop and also abused him in filthy language, apart from damaging the wooden racks kept inside the shop. P.W.5 corroborated the versions of P.W.1 and P.W.3. It is pertinent to point out that P.W.1 and P.W.3 have not at all been cross examined by the accused and P.W.5 alone was cross examined. Nothing useful was suggested to P.W.5 to discredit or disbelieve his versions. As already observed other



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witnesses including the investigating officer have not been cross examined by the accused for the reasons best known to him.

13. In this regard, as rightly pointed out by the learned Government Advocate (Crl. side), the present revision petitioner filed a petition under Section 311 of Cr.P.C., before the trial Court in C.M.P.MNo.20912 of 2021 for recalling the witnesses to examine the prosecution side witnesses. The said petition was dismissed on 05.10.2021. Challenging the said order, the present revision petitioner filed Crl.O.P.No.20047 of 2022 before this Court and the same was dismissed for non prosecution on 26.08.2022. Subsequently, he filed another application in C.M.P.No.47863 of 2022 to restore Crl.O.P.No.20047 of 2022 and the said petition was also dismissed for default by this Court. Thus it is clear that the present petitioner did not take any steps to cross examine the prosecution witnesses. Therefore the contention of the learned counsel for the revision petitioner that the accused was not given sufficient opportunity to cross examine the witnesses, cannot be accepted.



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14. The evidence of P.W.1, P.W.3 and P.W.5 is clear, cogent and there is no good ground to disbelieve their version.

15. Mr.M.Dharmarajan, learned counsel for the petitioner contended that according to the defacto complainant, the place of occurrence is No.121, Ramala Nagar whereas, the prosecution has filed final report stating that the place of occurrence is Arignar Anna Nagar, Ukkadam, Coimbatore.

16. A perusal of the complaint (Ex.P6) shows that the address of the defacto complainant is given as 121, Ramala Nagar, Saramedu, Karumbukaadu, Coimbatore. In the complaint as well as in the evidence, P.W.1. had clearly stated that the accused was breaking the lock of the shop belonging to one Subayrul Ameer and the said shop was in his care and custody. Therefore, the place of occurrence is not 121, Ramala Nagar as alleged by the counsel for the revision petitioner and even otherwise the witnesses were not cross examined in this regard.



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17. It is trite that in a Criminal Revision, the High Court cannot act as II appellate Court against the concurrent findings of facts except on the questions of jurisdiction.

18. The learned counsel for the petitioner contended that the petitioner/accused is the only son of the aged parents and that he has to take care of them.

19. Considering the above, the order of the appellate Court is set aside only in respect of sentence of imprisonment alone. However, since the accused had damaged the wooden rack worth about Rs.5,000/- which belongs to P.W.1, the conviction and sentence is modified as under:

<i>S.No.</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
1	Section 294(b) I.P.C.	pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for a period of six months
2	Section 427 I.P.C.	pay a fine of Rs.4,500/-in default to undergo Simple Imprisonment for a



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<i>S.No.</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
		period of six months
3	Section 506(ii) I.P.C.	pay a fine of Rs.4,500/-, in default to undergo Simple Imprisonment for a period of six months
(Total fine amount is Rs.10,000/-)		

20. With the above modification, this Criminal Revision is partly allowed. Consequently, connected miscellaneous petition is closed.

28.07.2023

Index: Yes/No
Speaking/Non-Speaking order
vum

R. HEMALATHA, J.

vum

To

1.The I Additional District and Sessions Judge,
Coimbatore.

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2. The V Judicial Magistrate in Coimbatore.

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2. The Sub-Inspector of Police,
B-4, Ukkadam Police Station,
Coimbatore.

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

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