



Crl.R.C.No.1903 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1903 of 2023 and
Crl.M.P.No.17748 of 2023

Kunjan

... Petitioner

Vs.

The State rep by its,
The Sub-Inspector of Police,
Vellithirupur Police Station, Erode.
(Crime No.333 of 2021).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set-aside the judgment in Crl.A.No.152 of 2022, dated 24.02.2023 passed by IV Additional District and Sessions Judge, Bhavani, Erode confirming the conviction and sentence in C.C.No.13 of 2022 dated 10.08.2022 passed by the Judicial Magistrate No.II, Bhavani, Erode District and call for the records and acquit the petitioner from all the charges.

For Petitioner	:	Mr.E.C.Ramesh
For Respondent	:	Mr.S.Vinoth Kumar, Government Advocate (Crl. Side)

ORDER

The petitioner/accused in C.C.No.13 of 2022 was convicted by the learned Judicial Magistrate No.II, Bhavani (trial Court), by judgment, dated 10.08.2022 for offence under Section 379 of IPC and sentenced to undergo two years Simple Imprisonment and to pay a fine of Rs.1,000/-, in default to



undergo one month Simple Imprisonment. Aggrieved over the judgment of the trial Court, the petitioner preferred an appeal before the learned IV Additional District and Sessions Judge, Bhavani (lower appellate Court) in C.A.No.152 of 2022. The lower appellate Court, by judgment, dated 24.02.2023 dismissed the appeal confirming the conviction of the petitioner for offence under Section 379 of IPC, but modifying the sentence to Simple Imprisonment for a period of six months and to pay a fine or Rs.1,000/-, in default to undergo Simple Imprisonment for one month. Aggrieved over the same, the petitioner preferred this Criminal Revision Case.

2.Though very many grounds raised in the present Criminal Revision Case, the learned counsel for the petitioner now confines his submission to the point that the petitioner remanded to Central Prison, Coimbatore on 15.05.2023 pursuant to the judgment of the trial Court, dated 10.08.2022. The period of sentence is getting completed. The only grievance and apprehension of the petitioner is that the petitioner had been in prison as under trial prisoner during the period from 27.12.2021 to 01.01.2022 a period of five days. Though the trial Court in its judgment had given benefit under Section 428 Cr.P.C., the prison authorities not considered the same. Hence, six months period of his detention from 15.05.2023 to be calculated including five days period of his



detention from 27.12.2021 to 01.01.2022. If that is included and calculated, the petitioner almost completed the period of sentence and he will be entitled for release.

3.The learned Additional Public Prosecutor appearing for the respondent Police produced the letter of the Superintendent of Prison, Central Prison, Coimbatore in No.24641/Tha.Ku.1/2023, dated 09.11.2023 stating that the petitioner is a convict No.24641 and he is in prison from 15.05.2023. He further confirmed that the trial Court in its judgment in C.C.No.13 of 2022, dated 10.08.2022 extended the benefit of Section 428 Cr.P.C., and thereby the petitioner's incarceration during under trial prisoner from 27.12.2021 to 01.01.2022, the period of five days, will be considered and given due credit. Once the petitioner completes the six months period, the prison authorities would release the petitioner immediately.

4.Considering the submissions and on perusal of the materials, it is seen that the petitioner had been in prison as under trial prisoner from 27.12.2021 to 01.01.2022 for a period of five days. These five days to be given credit as per the judgment of the trial Court in C.C.No.13 of 2022, dated 10.08.2022. The petitioner's original conviction of two years now modified to six months by the



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lower appellate Court, by judgment 24.02.2023 in C.A.No.152 of 2022.

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5.It is also seen that the petitioner is in prison from 15.05.2023 and now, the petitioner has to undergo sentence of six months. This six month to be reckoned adding five days of incarceration as under trial prisoner from 27.12.2021 to 01.01.2022. As and when the petitioner completes six months, he has to be released forthwith. The Superintendent of Prison, Central Prison, Coimbatore in his letter dated 09.11.2023 confirms that the petitioner is not required in any other case as per the prison records.

6.With the above directions, this Criminal Revision Case is disposed. Consequently, the connected Miscellaneous Petition is closed.

10.11.2023

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index : Yes/No

Internet : Yes/No

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To

1.The IV Additional District and Sessions Court,
Bhavani.



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2.The Judicial Magistrate Court No.II,
Bhavani.

3.The Sub-Inspector of Police,
Vellithirupur Police Station,
Erode.

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