



Crl.R.C.(MD)No.138 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 27.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.138 of 2019

and

Crl.M.P(MD) Nos. 2292 and 2293 of 2019

Dhandapani

... Petitioner/Appellant / Sole Accused

vs.

The State,
Rep. by Sub-Inspector of Police,
Karur Town Police,
Karur.

... Respondent/ Respondent/ Complainant

PRAYER : This Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the Judgment dated 01.08.2018 made in C.A.No.148 of 2017 on the file of learned Additional District Judge, Karur confirming the judgment and sentence passed in C.C.No.129 of 2016 on the file of the learned Judicial Magistrate No.I, Karur, dated 04.09.2017, sentenced to undergo one year simple imprisonment.

For Petitioner : Mr.S.Gokul Raj

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Criminal Side)



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ORDER

This Criminal Revision Petition has been filed to set aside the Judgment dated 01.08.2018 made in C.A.No.148 of 2017 on the file of learned Additional District Judge, Karur, confirming the judgment and sentence passed in C.C.No.129 of 2016 on the file of the learned Judicial Magistrate No.I, Karur, dated 04.09.2017.

2.The case of the prosecution is that on 28.11.2015 at about 12.00 p.m., the de-facto complainant parked his two wheeler, viz., Hero Honda Splendor bearing Registration No.TN-46-B-9749 worth about Rs. 15,000/-. It was stolen by the accused. Based on the complaint given by the de-facto complainant, the respondent police registered the FIR in Crime No.862 of 2015 for the offence punishable under Section 379 of IPC. After completion of investigation, the respondent filed the final report and the same has been taken cognizance by the trial Court.

3.On the side of the prosecution, they had examined P.W.1 to P.W.6 and marked Ex.P.1 to Ex.P.7 and also produced M.O.1. On the side of the accused, no one was examined and no documents were produced.



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4.On perusal of the oral and documentary evidence, the trial Court convicted the petitioner for the offence under Section 379 of IPC and sentenced him to undergo one year Simple Imprisonment. Aggrieved by the same, the petitioner has preferred an appeal in C.A.No.148 of 2017 on the file of learned Additional District Judge, Karur and the Appellate Court also dismissed the appeal on 01.08.2018 and thereby, confirming the order of conviction and sentence imposed by the trial Court. Hence, the present revision.

5.The learned counsel for the petitioner would submit that the petitioner was caught hold by P.W.6 along with the Hero Honda Splendor two wheeler on 09.12.2015. The occurrence took place on 28.11.2015 and thereafter, on 09.12.2015, the present case along with two other FIRs were registered by the respondent police against the petitioner. In any single case, the prosecution failed to explain the delay in lodgment of complaint. The confession statement of the petitioner was recorded by P.W.6 only in the presence of P.W.4 and another witness. However, another witness one Prakash was not able to examine by the prosecution. Therefore, there was absolutely no corroboration in order to prove the



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confession statement which was examined in the presence of P.W.4. In fact, the prosecution also failed to prove the recovery of three motorcycles, since no motorcycle is found with cogent number. The petitioner so far has been incarceration for a period of three months. Therefore, the prosecution has failed to prove its case beyond any doubt and the petitioner is liable to be acquitted.

6.Per contra, the learned Government Advocate (Crl. Side) would submit that there was recovery from the petitioner and the vehicle was duly identified by the de-facto complainant. Though on 09.12.2015 all the three cases were registered, the recoveries in all the cases clearly lead to the confession. Therefore, the prosecution prove its case beyond any doubt and both the Courts below rightly and concurrently held that the petitioner is liable to be convicted for the offence under Section 379 IPC. Therefore, it does not require any interference by this Court.

7.Heard the learned counsel on either side and perused the materials available on record.



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8. Admittedly on 09.12.2015, the First Information Report was registered for the offence under Section 379 of IPC. The de-facto complainant was examined as P.W.1. In support of his contention, P.W.2 was examined by the prosecution, who is none other than the friend of P.W.1. The de-facto complainant lodged complaint alleging that his two wheeler was stolen by the petitioner on 28.11.2015 itself and he lodged a complaint only on 09.12.2015 and on the same day, other two First Information Reports were registered in Crime No.863 and 864 of 2015 against the petitioner for the very same offence under Section 379 of IPC. On the confession statement of the petitioner, the vehicle was also recovered from him in the presence of P.W.4. P.W.4 categorically supported the case of the prosecution. Therefore, though the respondent registered the three FIRs on the same day, on his confession, there was recovery in the presence of P.W.4, another witness confession was not examined by the prosecution. It is not fatal to the case of the prosecution, since one of the witness averred confession statement categorically deposed that the recovery was made from him. All the three two wheelers were duly recognized by P.W.1 in all the cases. The friend of P.W.1 was examined as P.W.2 and he supported the case of the prosecution and there



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is no contradictions between P.W.1 and P.W.2. However, the de-facto complainant has failed to explain the delay in lodgment of complaint. Therefore, both the Courts below have rightly convicted the petitioner and this Court finds no infirmity or illegality in the order passed by the Courts below.

9.Considering the above facts and circumstances, this Court is inclined to reduce the sentence imposed by the Courts below as to the period already undergone by the petitioner.

10.In view of the above, the conviction imposed by the Courts below for the offence punishable under Section 379 of IPC, is hereby confirmed and the sentence imposed by the Courts below is hereby modified to the period which was already undergone by the petitioner.

11.Accordingly, this Criminal Revision Case is partly allowed. Consequently, connected miscellaneous petitions are closed.

27.06.2023

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NCC : Yes/No

Index: Yes/No

Internet: Yes/No



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To

- 1.The Additional District Judge, Karur
- 2.The Judicial Magistrate No.I, Karur
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN , J.

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