



*CrI.RC.(MD).No.395 of 2023*

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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|---------------|------------|
| Reserved On   | 01.09.2023 |
| Pronounced On | 17.11.2023 |

**CORAM**

**THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

CrI.RC(MD).No.395 of 2023  
and  
CrI.M.P.(MD).No.7957 of 2023

1.Vigneshwaran

2.Dhanasekaran

.. Petitioners

Vs.

The State rep.by  
The Inspector of Police,  
Thanjavur South Police Station,  
Thanjavur District.  
(Cr.No.334 of 2017)

.. Respondent

**PRAYER:** Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records pertaining to the impugned judgment and conviction passed by the learned Judicial Magistrate No-I, Thanjavur, dated 29.09.2022 made in C.C.No.125 of 2018, and which is confirmed by the learned Principal Sessions Judge, Thanjavur, in C.A.No.85 of 2022, dated 03.02.2023 and set aside the same.



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For Petitioners : Mr.K.M.Karunakaran

For Respondent : Mr.R.Sivakumar  
Government Advocate (Criminal Side)

### **ORDER**

This Criminal Revision Case has been filed as against the impugned judgment in Crl.A.No.85 of 2022 dated 03.02.2023, on the file of the learned Principal Sessions Judge, Thanjavur, confirming the order in C.C.No.125 of 2018, dated 29.09.2022, on the file of the learned Judicial Magistrate No.I, Thanjavur.

2. The prosecution came forward with the case that on 07.12.2017, at about 06.00 p.m, P.W.1 parked his vehicle near a shop called Krishna sweets, situated at Muthayampalayam, Thanjavur District. After sometime, when he returned, notice that the accused persons were taking the said two wheeler and proceeding towards the New bus stand. Therefore, P.W.1 and P.W.2 ran after the accused and caught them. Thereafter P.W.1, P.W.2 and other witnesses produced the accused before the respondent police. Pursuant to which, the respondent police arrested the accused and registered the case against them for the offence punishable under Section 379 of IPC.



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3. After registration of the case, the respondent police conducted investigation filed a final report before the learned Judicial Magistrate No.1, Thanjavur and the same was taken on file in C.C.No.125 of 2018.

4. The learned trial Judge, furnished copies under Section 207 of Cr.P.C. After furnishing, the copies, the learned trial Judge framed necessary charges and questioned the accused. They pleaded not guilty and hence they stood for trial.

5. The prosecution to prove the charges, examined six witnesses namely PW1 to P.W.6 and marked exhibits Ex.P1 to Ex.P10 and marked M.O.1 and M.O.2.

6. The learned Judicial Magistrate No-I, Thanjavur, questioned the accused under Section 313 Cr.P.C., and they denied their involvement and specifically answered as false. Thereafter, the trial Judge convicted the petitioners and sentenced them to undergo one year of simple imprisonment. As against the same, the petitioners herein filed an appeal in Crl.A.No.85 of 2022, before the learned Principal Session Judge, Thanjavur, the same was confirmed by judgement dated 03.02.2023. Challenging the same, the petitioners herein filed this criminal revision case before



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7. The learned counsel for the petitioner submitted that there are discrepancies with regard to the time of registration of the case. Further, there is a contradiction between the evidence of P.W.1 and P.W.4, regarding the recovery of the vehicle. In addition to that there is no proper identification of the accused. The said aspects were not properly considered by both the Courts below. Hence, he seeks to set aside the judgment passed by both the Courts below.

8. The learned Additional Public Prosecutor, on instruction, submitted that the said the discrepancies are not material and examination of the witnesses was done after two years from the date of the occurrence. In the said circumstances, these types of discrepancies are quite natural. Hence, he seeks for confirmation of the order passed by the learned trial Judge. The learned Additional Public Prosector further submitted that the petitioners caught red handed while stealing the vehicle. The fact of recovery of the vehicle from the custody of the petitioner has not been disputed. Hence, the learned trial Judge and the appellate Judge correctly convicted the petitioners for the offence punishable under section 379 of IPC.



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9. This court considered the rival submissions made on either side and perused the materials available on record and the impugned orders passed by both the Courts below.

**10.Proof of theft committed by the petitioners:**

10.1.According to the prosecution, P.W.1 and P.W.2 after coming out of the Krishna sweets stall situated in Thanjavur have noticed that the petitioners were taking the two wheeler, which was parked by P.W.1 and were proceeding towards the New bus stand. Immediately, PW1 and P.W.2 ran after them. When the petitioners attempted to escape from the scene of the occurrence, with the two wheeler, the public and other witnesses intercepted the petitioners and caught them.

10.2.Hence, the recovery was clearly proved and the petitioners were identified by P.W.1 and P.W.2, the argument of the learned counsel for petitioner that they are not trust worthy is not accepted. P.W.1 deposed before the court that the occurrence took place at 07.00 p.m., and the registration of FIR is 07.30 p.m. The minor discrepancy regarding the time in registering the FIR is not a material one. The evidence of P.W.4 is also cogent and trust worthy, but the submission of the learned



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counsel for the petitioner that there is some discrepancies between the evidence of both the witnesses is not correct. A holistic reading of the evidence of both witnesses, shows no such discrepancies. It is a well settled principle that the entire evidence is to be read to arrive at a finding.

10.3.In this case, this court finds no material discrepancies and infirmity in the appreciation of the evidence of witnesses. The prosecution clearly proved the case against the petitioners under Section 379 of IPC. Therefore, the prosecution has proved the case beyond all reasonable doubt that the petitioners have committed theft.

#### **11. Recovery:**

When the petitioners attempted to escape from the scene of the occurrence, with the two wheeler, P.W.1, P.W.2 and other witnesses intercepted the petitioners and caught them. Thereafter, the petitioners were produced with the two wheeler before the police station. The said evidence of P.W.1 and P.W.2 is cogent and corroborative. The evidence of the both witnesses is trust worthy.



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**12. Absence of the explanation:**

The petitioners have failed to explain the possession of the two wheeler of P.W.1. Hence, the presumption under Section 114 of the Indian Evidence Act, comes into play. Section 114 of the Indian Evidence Act reads as follows:

***114. Court may presume existence of certain facts:-***

*The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*

***Illustrations***

***The Court may presume:-***

*(a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;*

The Hon'ble Supreme Court, in the case of ***Ayodhya Singh v. State of Rajasthan, (1972) 3 SCC 885*** held as follows:

*10. According to illustration (a) of Section 114 of the Indian Evidence Act, a man who is in possession of stolen goods soon after the theft is either the thief or has received the*



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*goods knowing them to be stolen, unless he can account for his possession. It would, in our opinion, depend upon the facts and circumstances of each case whether the court should draw the presumption that a person found in possession of stolen goods soon after the theft and who has not been able to account for his possession is the thief or whether he is the receiver of the goods knowing them to be stolen. We may state at this stage that the appellant has not been able to account for his possession of the stolen articles and the explanation furnished by him is not all worthy of credence. Looking to the facts and circumstances of the case, we are of the view that the courts below were justified in drawing the presumption that the appellant was guilty of the offence under Sections 457 and 380, Penal Code, 1860. The fact that the culprits entered the room on the third floor by opening the window and thereafter broke open a large number of boxes and almirahs and removed huge quantity of gold and silverware shows that it was not the work of a single individual. The fact that the appellant was found soon after the theft in possession of a very large number of stolen articles shows that he was himself the thief and not the receiver of stolen goods. The present is not a case wherein one or two or a very few of the stolen articles were found in the possession of the appellant soon after the theft. On the contrary, the bulk number of stolen articles were recovered from him. The number*



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*and the nature of the stolen articles recovered from the appellant soon after the theft coupled with the other circumstances of the case, in our opinion, warrant the presumption that the appellant himself committed the theft after entering the room on the third storey of Kistoor Chand's house through the window.*

13. Therefore, in all aspects, the prosecution has clearly proved the case beyond all reasonable doubt. In such circumstances, this Court does not find any merits in the contention of the learned counsel for the petitioner and also there is no perversity in the judgment of both the Courts below to interfere under the revisionary jurisdiction of this Court.

14. Accordingly, the Criminal Revision Case stands dismissed. Consequently, connected Miscellaneous Petition is closed.

**17.11.2023**

NCC :Yes/No  
Index :Yes/No  
Internet :Yes/No

*sbn*



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- 1.The Inspector of Police,  
Thanjavur South Police Station,  
Thanjavur District.
- 2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.K.RAMAKRISHNAN, J.**

*sbn*

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