



Crl.R.C.(MD).No.1017 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	13.09.2023
Pronounced On	:	17.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). No.1017 of 2023

and

Crl.M.P(MD). Nos.13116 and 13117 of 2023

Selvi @ Saroja

... Revision Petitioner/Appellant/Accused No.1

Vs.

State rep.by

The Inspector of Police,

Sivakasi Town Police Station,

Virudhunagar District,

In Crime No.383 of 2012. ... Revision Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to admit this Revision on file, to call for the records from the Lower Courts and set aside the Judgment of the Appellate Court passed in Criminal Appeal No.134 of 2022 on the file of the Learned Principal District and Sessions Court, Virudhunagar District at Srivilliputhur dated 21.07.2023 confirming the Judgment in C.C.No.205 of 2012 on the file of the Learned Judicial Magistrate No.I, Sivakasi dated 19.09.2022 by allowing this Revision.



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Crl.R.C.(MD).No.1017 of 2023

For Petitioner : Mr.S.Maya Perumal
For Respondent : Mr.M.Muthumanikkam
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case has been filed as against the impugned judgment in Crl.A.No.134 of 2022, dated 21.07.2023, on the file of the learned Principal District and Sessions Judge, Srivilliputhur, confirming the order in C.C.No.205 of 2012, dated 19.09.2022, on the file of the learned Judicial Magistrate No-I, Sivakasi.

2. The prosecution came forward with the case that on 24.05.2012, the petitioner herein approached the defacto complainant and asked to give house cleaning work as a servant. Therefore, the defacto complainant allowed her to work in his house as servant. Thereafter, the defacto complainant came to know that the petitioner committed theft some gold jewels and mobile phone. Hence, the defacto complainant made a complaint before the respondent police and the respondent police registered a case in Crime No.383 of 2012 for the offence punishable under Section 381 of IPC.



Crl.R.C.(MD).No.1017 of 2023

WEB COPY

3. After registration of the case, the respondent police conducted investigation and arrested the accused. The petitioner confessed that she stole the jewels and money and entrusted the same with the second accused. On the basis of the confession, the jewels were recovered. After the completion of investigation, the respondent police filed final report before the learned Judicial Magistrate No-I, Sivakasi and the same was taken on file in C.C.No.205 of 2012.

4. After a full-fledged trial, the learned Judicial Magistrate No-I, Sivakasi, framed necessary charges and the learned Judicial Magistrate No-I, convicted the petitioner and sentenced her to undergo three years of rigorous imprisonment and fine of Rs.1,000/- in default to undergo two months simple imprisonment. As against the same, the petitioner herein has filed Crl.A.No.134 of 2022 before the learned Principal District and Sessions Judge, Srivilliputhur, Virudhunagar District and the same was dismissed on 21.07.2023. Aggrieved over the same, the petitioner filed this criminal revision case before this Court.

5. The learned counsel for the petitioner submitted that the prosecution never established the case against the petitioner without taking the finger print report. The learned counsel further submitted that the petitioner, in her



Crl.R.C.(MD).No.1017 of 2023

confession, has specifically, stated that she colluded with the other accused and stolen the jewels and shared the same between them. There was no evidence in this aspect. Both the Courts below failed to see that the recovery mahazar itself would disclose that the same was not prepared by the Inspector of Police. Further, the Courts below failed to see that the recovery of the property has also not been proved by the prosecution under Section 27 of the Evidence Act. The learned trial Judge and the appellate Judge, without any evidence, presumed that the petitioner committed the offence, and simply on the basis of the recovery, convicted the petitioner. Hence, he seeks to allow this case.

6. The learned Government Advocate (Criminal Side) submitted that in this case, the petitioner joined as a servant and committed theft of jewels and money. The said jewels were recovered on the basis of the confession and the disclosure has also been made on the basis of the confession. It is a well settled principle that as per Section 114 (A) of the Indian Evidence Act, when the jewels were recovered on the basis of the confession given by the accused, it is presumed that the theft was committed by the petitioner. In this aspect, it is relevant to note the judgment of the Hon'ble Apex Court in the case of ***Earabhadrappa @ Krishnappa Vs State of Karnataka***, reported in ***AIR 1983***



Crl.R.C.(MD).No.1017 of 2023

SC 446. He would further submit that the Courts below, after considering the entire circumstances and deposition of witnesses, have found that the petitioner has committed the offence. Hence, there was no ground to interfere with the order.

7. This Court considered the rival submissions made on either side and perused the materials available on records and precedents relied on by them.

8. Recovery:

According to the prosecution, the petitioner is a servant of the defacto complainant. She had stolen the jewels and money from the house of the defacto complainant. On the basis of the complaint given by the defacto complainant, the respondent police has registered the case. After registration of the case, the respondent police arrested the accused/petitioner. Thereafter, she gave confession that she committed theft of jewels. She further disclosed the fact that the stolen jewels and cash were entrusted with the co-accused. On the basis of the disclosure, the jewels were recovered. Hence, the recovery is proved in accordance with law.



Crl.R.C.(MD).No.1017 of 2023

WEB COPY

9. Proof of theft committed by the petitioner

P.W.1, clearly deposed that the petitioner was working as a servant in his house. P.W.1 further deposed that the petitioner joined duty on 24.05.2012 and she left the house on the next day itself. In the interregnum period, the jewels were found missing and the same were recovered on the basis of the confession of the petitioner. Therefore, the prosecution has proved their case beyond reasonable doubt that the petitioner had committed theft.

10. Absence of the explanation

The petitioner is failed to explain the possession of the jewels of the defacto complainant. 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



Crl.R.C.(MD).No.1017 of 2023

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 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



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Crl.R.C.(MD).No.1017 of 2023

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 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.

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



Crl.R.C.(MD).No.1017 of 2023

12. Accordingly, the Criminal Revision Cases stands dismissed.

Consequently, connected criminal miscellaneous petitions are closed.

02.11.2023

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

To

1. The Principal District and Sessions Judge,
Srivilliputhur, Virudhunagar District.
2. The Judicial Magistrate No.I,
Sivakasi.
3. The Inspector of Police,
Sivakasi Town Police Station,
Virudhunagar District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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Crl.R.C.(MD).No.1017 of 2023

K.K.RAMAKRISHNAN, J.

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Pre-delivery Order made in
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