



CrI.M.P.No.1884 of 2024
in CrI.R.C.No.218 of 2024

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M.NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed to suspend the execution of the sentence imposed by the learned Principal Sessions Judge, Tiruppur (lower appellate Court) in C.A.No.169 of 2023, dated 04.12.2023 confirming the judgment, dated 14.06.2023 in C.C.No.121 of 2021 passed by the learned Judicial Magistrate, Avinashi (trial Court) and also release the petitioners on bail pending disposal of the main Criminal Revision Case.

2.The petitioners were convicted by the trial Court for the offence under Section 392 IPC and sentenced to undergo rigorous Imprisonment for three years and to pay a fine of Rs.1,000/- each, in default, to undergo one month simple imprisonment. Against which, the petitioners preferred an appeal which was dismissed by the lower appellate Court confirming the conviction and sentence imposed by the trial Court.



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3.The contention of the learned counsel for the petitioners is that the petitioners have been falsely implicated in this case as though they were involved in several offences of similar nature. In this case, PW1 is the defacto complainant, who had given a complaint as though on 09.03.2021 when she was proceeding to her sister's place at about 12.00 noon, four persons came in two bikes, namely, KTM bike bearing registration No.TN 39 CQ 2444 and a Pulsor bike bearing registration No. TN-56-P-0253, followed the defacto complainant and snatched 1½ sovereigns of chain from her. The defacto complainant cried for her but nobody came. Thereafter, the defacto complainant informed her husband but he took her to sister's place who was not well and ten days thereafter, complaint lodged. In the complaint, there is no details about the identity of the persons and their specific features. In this case, it is projected as though on 18.03.2021 PW7/Investigating Officer who was keeping a watch over the area, at that time, he found two vehicles, namely, KTM bike and a Bajaj Pulsor bike parked near the Auto stand, enquired, kept watch over the place. On the same day, at about 3.00 p.m., when four persons came there to take the



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vehicles, they were questioned and enquired, they admitted their involvement in the offence in that area for some time and thereafter, on their arrest they gave a confession and the snatched chains were recovered. PW4 is projected as the witness for arrest, confession and recovery. PW1/victim admit that she was called to the Police Station on 19.03.2021 wherein the Police identified the petitioners/accused in the case and also shown her gold chain. PW7/Investigating Officer admits that the photographs of the accused along with the articles were widely published in the media and this has been done at the instance of the superior Police Officer. In this case, the accused were identified in the Police Station and no test identification parade conducted. Further, there is a delay of nearly ten days in lodging the complaint which is highly artificial. The material objects produced does not tally with the description of the material object snatched from the petitioner. The Investigating Officer admits that there is CCTV cameras available in the scene of occurrence but no CCTV recordings produced. He would submit that the confession statement, mahazars are computer typed print outs taken, the Police submit that the witnesses signed the mahazar in the scene of occurrence but the print outs were taken at the Police Station,



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hence the very arrest, confession and recovery becomes doubtful. He further submitted that on the evidence of PW4, it is seen that the articles were recovered from the house of Balamurugan/PW5, yet another person's house in Thiru Nagar and from the house of Nishanth in Vadavelli, Coimbatore where three chains stated to have been recovered. But the said Nishanth not examined as witness. In view of the same, the Trial Court as well as the Lower Appellate Court failed to consider that in this case the identity, arrest and recovery has not been proved. Following this case, the petitioners were shown arrest and recovery made in several cases of similar nature. The Trial Court had given a moral conviction not on the legal evidence. He would further submit that the petitioners have completed Engineering course and now employed, who are at the crucial age of their career. Hence, he prayed for granting suspension of sentence.

4.The learned Additional Public Prosecutor filed his counter and submitted that the case of the prosecution is that on 09.03.2021 at about 12.15 hours when the defacto complainant was on her way to Appiyampalayam in her TVS XL Super to meet her relative, at that time,



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the petitioners/accused who were riding a KTM bike bearing registration No.TN-39-CQ-2444 and a Pulsor bike bearing registration No.TN-56-P-0253 were following the defacto complainant from Pazhangarai. They overtook her and parked their vehicles near Perumanallur junction and waited there. When the defacto complainant took the service road, they followed her and A1 snatched her 1½ sovereign gold chain and fled away from the scene of occurrence. Based on the complaint lodged by the defacto complainant, a case in Crime No.116 of 2021 was registered for the offence under Section 392 IPC. During the course of investigation, on 18.03.2021 at about 15.00 hours, the Investigating Officer arrested the accused, recorded their confession statement and came to know that the petitioners along with other accused involved in many cases of similar nature. Based on their confession statement, properties were seized in all the cases and produced before the Trial Court and the accused persons were remanded to judicial custody. On completion of investigation, charge sheet filed. During the trial, PW1 to PW7 examined, Ex.P1 to Ex.P18 and M.O.1 marked on the side of the prosecution. On the side of the defence, no witness examined and no documents marked. On conclusion of trial, the



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Trial Court convicted the petitioners as stated above which was confirmed by the Lower Appellate Court.

5.Considering the submissions made and on perusal of the materials, it is seen that in the complaint, there is no specific details of the persons who committed the offence and also with regard to the gold chain. The complaint itself was lodged with a delay of ten days and the reason for the delay seems to be artificial. In this case, PW7/Investigating Officer admits that in the place of occurrence, CCTV camera available but no CCTV recordings produced. PW1/victim admits that the accused were identified to her in the Police Station. PW7 admits that the photographs of the accused taken along with the articles were published in the local media and newspapers. PW5/Balamurugan, from whom some of the articles were seized does not support the case of the prosecution. Further, one Nishanth from whom three gold chains recovered neither examined as witness nor arrayed as accused in this case. Hence, finding infirmities this Court is inclined to grant suspension of sentence to the petitioners.



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6. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioners is suspended till the disposal of the revision and the petitioners are ordered to be enlarged on bail, on condition that they shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties, each for a like sum to the satisfaction of the trial Court.

7. Further, the petitioners shall appear before the Trial Court on the first working day of once in three months at 10.30 a.m. until the disposal of the criminal revision and if they were not able to appear before the Trial Court on that day, they shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of their absence as directed by the Trial Court. Accordingly, this Miscellaneous Petition is ordered.

28.03.2024

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