



CrI.M.P.No.1874 of 2024
in CrI.R.C.No.215 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.168 of 2023, dated 04.12.2023 confirming the judgment, dated 14.06.2023 in C.C.No.207 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.



Crl.M.P.No.1874 of 2024
in Crl.R.C.No.215 of 2024

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3.The contention of the learned counsel for the petitioners is that the case projected against the petitioners is that on 16.03.2021 at about 20.30 hours, PW1 coming in her two wheeler after attending the work, at that time, the petitioners came in a bike from behind snatched her chain and fled away from the scene of occurrence. Since she was in a state of shock, she informed her brother on the next day and lodged a complaint. PW5/Investigating Officer informed PW1 that PW4/Inspector of Police, Perumanallur Police Station arrested the accused in connection with another case and they have given confession about their involvement in the above case. Thereafter, PW1 went to the Police Station, identified the accused in the Police Station and her gold chain. Further, the photographs of the accused along with the articles were taken, published in the newspapers and in the local media. He would submit that in the photographs display of several mobile phones found but no case for theft of mobile phones was registered against accused persons. PW3 is the witness for arrest, confession and recovery, who admits that after the arrest, the accused persons were taken to Thirunagar to the house of Balamurugan from where



Crl.M.P.No.1874 of 2024
in Crl.R.C.No.215 of 2024

three chains seized and thereafter, from the house of Nishanth in Vadavelli, Coimbatore three chains recovered. But the said Balamurugan and Nishanth not examined as witnesses. Further, the Investigating Officer admits availability of CCTV camera near the scene of occurrence but no CCTV recordings produced. He further submitted that PW1 admits that during the chain snatch, the chain was broken but in Ex.P2/photographs, it is seen that the chain is complete. The Trial Court as well as the Lower Appellate Court failed to consider that in this case the identity, arrest and recovery not proved. Following this case, the petitioners were shown arrest and recovery made in several cases of similar nature. The Trial Court given a moral conviction not on the legal evidence. 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 17.03.2021 at about 10.00 hours, the defacto complainant lodged a complaint stating that on 16.03.2021 at about 20.0 hours, when she was returning home in her two wheeler after work, at that time, two unknown persons came in a two



Crl.M.P.No.1874 of 2024
in Crl.R.C.No.215 of 2024

wheeler, the pillion rider of the bike snatched her five sovereigns gold chain and fled from the scene of occurrence. Based on the complaint by the defacto complainant, a case in Crime No.113 of 2021 was registered for the offence under Section 392 IPC. During the course of investigation, on 02.04.2021, the Investigating Officer formally arrested the accused who were already arrested by the Inspector of Police, Perumanallur Police Station who produced the accused persons for remand to judicial custody. On completion of investigation, charge sheet filed. During the trial, PW1 to PW5 examined and Ex.P1 to Ex.P11 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 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 are no specific details of the persons who committed the offence and also with regard to the gold chain. In this case, PW5/Investigating Officer admits that in the scene of occurrence, CCTV camera available but no CCTV recordings produced. PW1/victim



Crl.M.P.No.1874 of 2024
in Crl.R.C.No.215 of 2024

admits that the accused were identified by her in the Police Station. PW5 admits that the photographs of the accused taken along with the articles telecasted in the local media and published in newspapers. Further, the properties were seized from the house of Balamurugan and Nishanth, but they were neither examined as witnesses nor arrayed as accused in this case. It is also seen that PW4/Inspector of Police, Perumanallur Police Station stated that he along with PW5/Inspector of Police, Avinashi Police Station were patrolling and keeping a watch on the accused persons but the evidence of PW5/Investigating Officer is that arrest and recovery were informed to her by PW4. Hence finding infirmities, this Court is inclined to grant suspension of sentence to the petitioners.

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.



Crl.M.P.No.1874 of 2024
in Crl.R.C.No.215 of 2024

7.Further, the petitioner 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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Crl.M.P.No.1874 of 2024
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Crl.M.P.No.1874 of 2024
in Crl.R.C.No.215 of 2024

28.03.2024