



Crl.M.P.No.1892 of 2024
in Crl.R.C.No.222 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.167 of 2023, dated 04.12.2023 confirming the judgment, dated 14.06.2023 in C.C.No.180 of 2021 passed by the learned Judicial Magistrate, Avinashi (trial Court) and also release the petitioner on bail pending disposal of the main Criminal Revision Case.

2.The petitioner was 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/-, in default, to undergo one month simple imprisonment. Against which, the petitioner 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 petitioner is that the case projected against the petitioner is that on 23.02.2021 at about 10.00 p.m., PW1 attended a marriage function in Kulalar Mandapam, Avinashi and she was in the procession in connection with the marriage, at that time, one unknown person who came in a two wheeler snatched her chain and fled away from the scene of occurrence. She raised alarm but in the midst of music, no one heard. Thereafter, she went to the Mandapam, not informed about the incident to anyone and on the next day, when her husband found the chain missing, enquired her and she informed the incident and thereafter, complaint was lodged, which is highly artificial. On 19.03.2021, PW7/Investigating Officer informed PW1 that the PW3/Inspector of Police, Perumanallur Police Station arrested the accused in connection with another case and gave confession about 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



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photographs there were display of several mobile phones but no case was registered against the accused for theft of any mobile. PW2 is the witness for arrest, confession and recovery, who admits that after the arrest, the accused taken to Thirunagar to the house of Balamurugan from where three chains were 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 CCTV cameras available in the scene of occurrence but no CCTV recordings produced. 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 petitioner was shown arrest and recovery made in several cases of similar nature. The Trial Court had 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 26.02.2021 at about 10.00 hours, the defacto complainant lodged a complaint stating that on



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23.02.2021 at about 10.00 p.m., when she attended the marriage procession of her relative at Kulalar Mandapam at Cheyyur Road, an unknown person came in a two wheeler and snatched her five sovereigns gold chain and fled away from the scene of occurrence. Based on the complaint lodged by the defacto complainant, a case in Crime No.85 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 was already arrested by the Inspector of Police, Perumanallur Police Station, who produce for remand to judicial custody. On completion of investigation, charge sheet filed. During the trial, PW1 to PW7 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 petitioner 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 person who committed the offence and also with regard to the gold chain. The



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complaint itself was lodged with a delay of three days and the reason for the delay seems to be artificial. In this case, PW7/Investigating Officer admits that in the scene of occurrence, CCTV camera available but no CCTV recordings produced. PW1/victim admits that the accused was identified by 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. Further, the properties seized from the house of Balamurugan and Nishanth, but both neither examined as witnesses nor arrayed as accused in this case. It is also seen that PW3/Inspector of Police, Perumanallur Police Station stated that he along with PW7/Inspector of Police, Avinashi Police Station were patrolling and keeping a watch on the accused persons but the evidence of PW7/Investigating Officer is that arrest and recovery were informed to him by PW3. Hence, this Court is inclined to grant suspension of sentence to the petitioner.

6. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond



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for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each
for a like sum to the satisfaction of the trial Court.

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 he is not able to appear before the Trial Court on that day, he 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 his absence as directed by the Trial Court. Accordingly, this Miscellaneous Petition is ordered.

28.03.2024

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