



CrI.M.P.No.1888 of 2024
in CrI.R.C.No.220 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.172 of 2023, dated 04.12.2023 confirming the judgment, dated 14.06.2023 in C.C.No.208 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 case projected against the petitioners is that on 17.03.2021 at about 7.00 p.m., PW1 took her mother/PW2 for medical checkup and while returning back, two persons who came in Yellow and Orange colour bike snatched her chain and fled away from the scene of occurrence. Thereafter, PW1 reached home, informed her husband/PW3 and complaint is said to have been lodged. On 19.03.2021, PW8/Investigating Officer informed PW1 that the 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 there were display of several mobile phones but no case was registered against the accused persons for theft of any mobile. PW7/Inspector of Police, Perumanallur Police Station who admits that in the presence of PW5/Kumaresan, arrest and recovery was made, who



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admits that after the arrest, the accused persons were taken to Thiru Nagar 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 that there is 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 not 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. 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 22.00 hours, the defacto complainant lodged a complaint stating that on 17.03.2021 at about 20.00 hours, when she was returning home along with her mother after visiting AKVN Hospital in a two wheeler, at that time, two



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persons came in orange and black colour two wheeler from behind, the pillion rider of the bike snatched three sovereigns of gold chain and fled away from the scene of occurrence. Based on the complaint lodged by the defacto complainant, a case in Crime No.115 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 and produced the accused persons for remand to judicial custody. On completion of investigation, charge sheet filed. During the trial, PW1 to PW8 examined and Ex.P1 to Ex.P13 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 is no specific details of the persons who committed the offence and also with regard to the gold chain. In this case, PW8/Investigating Officer admits that in the scene of occurrence,



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CCTV camera available but no CCTV recordings produced. PW1/victim admits that the accused were identified to her in the Police Station. PW8 admits that the photographs of the accused taken along with the articles were published in the local media and 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 PW7/Inspector of Police, Perumanallur Police Station state that he along with PW8/Inspector of Police, Avinashi Police Station were patrolling and keeping a watch on the accused persons but the evidence of PW8/Investigating Officer is that arrest and recovery were informed to him by PW7. 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.



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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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