



CrI.M.P.No.1896 of 2024
in CrI.R.C.No.224 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.171 of 2023, dated 04.12.2023 confirming the judgment, dated 14.06.2023 in C.C.No.181 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 18.03.2021 at about 6.00 a.m., when PW1 was plucking flowers in front of her house, two persons came in a two wheeler snatched her chain. Thereafter she raised alarm and on seeing PW10 coming to her help, the accused persons fled from the scene of occurrence. Though PW1 would state that one month thereafter, she went to the Central Prison, Coimbatore where she identified the petitioners but PW5 admits that on 18.03.2021 the photographs of the petitioners along with the seized articles published in the newspapers, thus the identification parade is of no significance. He would submit that in the photographs there were display of several mobile phones but no case registered against the accused persons for theft of any mobile. 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 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



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admits that there is CCTV cameras 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 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 18.03.2021 at about 10.00 hours, the defacto complainant lodged a complaint stating that on 18.03.2021 at about 06.00 hours, when she was plucking flowers in front of her house situated at Avinashilingampalayam Street, Kaikattipudhur, at that time, two unknown persons came in a two wheeler and and the pillion rider of the bike snatched her 2.5 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.116 of 2021 was registered for the offence under Section 392 IPC. During the course of investigation, on 15.04.2021,



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the Investigating Officer formally arrested the accused who were already arrested by the Inspector of Police, Perumanallur Police Station who produced for remand to judicial custody. On completion of investigation, charge sheet filed. During the trial, PW1 to PW6 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 is no specific details of the persons who committed the offence and also with regard to the gold chain. In this case, PW6/Investigating Officer admits that in the scene of occurrence, CCTV camera available but no CCTV recordings produced. PW1/victim admits that she went to the Central Prison, Coimbatore and identified the accused but PW6 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,



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but they were neither examined as witnesses nor arrayed as accused in this case. It is also seen that PW5/Inspector of Police, Perumanallur Police Station stated that he along with PW6/Inspector of Police, Avinashi Police Station were patrolling and keeping a watch on the accused persons but the evidence of PW6/Investigating Officer is that arrest and recovery were informed to her by PW5. Hence, this Court finding infirmities 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.

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



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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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