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Crl.RC No.437 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.437 of 2023

Gunasekaran ... Petitioner/accused

Vs.

State by

The Inspector of Police,

M-3 Kovilpalayam,

Coimbatore District.

(Cr.No.223 of 2017)

... Respondent /Complainant

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 of Cr.P.C, to call for the records in C.A.No.40 of 2022 dated 23.12.2022 by the learned I Additional District and Sessions Judge, Coimbatore District, confirming the order passed in C.C.No.630 of 2017 dated 31.05.2022 by the learned Judicial Magistrate No.II, Coimbatore and allow the appeal preferred by the petitioner.

For Petitioner : Mr.K.G.Senthil Kumar

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

ORDER

The Criminal Revision Case has been filed challenging the judgment dated 23.12.2022 made in Crl.A.No.40 of 2022 on the file of the learned I Additional District and Sessions Judge, Coimbatore District,



confirming the order of conviction and sentence passed by the learned Judicial Magistrate No.II, Coimbatore in C.C.No.630 of 2017 dated 31.05.2022.

2. It is the case of the prosecution that on 04.09.2017 at 8.00 a.m., the petitioner has committed the theft of the bike bearing Regn.No.TN38 BR 6157 from K.S.Pazhamuthir Nilayam within the jurisdiction of the respondent and hence liable for the offence under Section 379 of the IPC.

3. On the complaint given by the defacto complainant/owner of the vehicle [PW1], an FIR [Ex.P5] was registered by the respondent police in Cr.No.223 of 2017 against the petitioner/accused for the aforesaid offence.

4. The case was investigated by PW5 and a final report was filed against the petitioner/accused for the offence under Sections 379 of the IPC. The prosecution had examined 5 witnesses as PW1 to PW5 and marked 7 documents viz., Ex.P1 to Ex.P7. No oral or documentary evidence, was let in on the side of the accused.



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5. The trial Court after examining all the witnesses found the petitioner guilty of the offences under Section 379 of the IPC and convicted and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one month. On appeal, the appellate Court confirmed the conviction and sentence imposed by the trial Court.

6. Heard Mr.K.G.Senthilkumar, learned counsel for the petitioner/accused and Mr.S.Udaya Kumar, learned Government Advocate (Crl. Side), appearing for the respondent/State.

7. (i) The learned counsel for the petitioner/accused would submit that the offence of theft is not made out; that even according to the eyewitnesses, the petitioner was seen pushing the vehicle; that the petitioner was not identified by PW1; that PW1 had not established the ownership of the bike; that PW3 had not supported the case of the prosecution; that there are several other infirmities in the evidence, which warrants interference in the judgments of the Courts below and prayed



for setting aside the same.

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8. The learned Government Advocate (Crl. side) *per contra* submitted that the evidence of PW1 and PW2, is cogent and convincing; that the offence under Section 379 of the IPC is made out; that therefore no interference is called for and prayed for dismissal of the revision.

9. This Court has considered the rival submissions.

10. On perusal of the evidence, it is seen that PW1 had claimed that he is the owner of the vehicle, which is the subject matter of the theft. However, the prosecution had not produced any document to establish the ownership of the vehicle. This Court is of the view that in order to attract the offence under Section 378 of the IPC, it is not necessary to establish that the victim was the owner of the property. All that is required is that the property must be removed from the possession of the victim dishonestly. Further, in order to constitute theft, it is sufficient that if the offender intends to take the property dishonestly and moves it. The evidence of PW1 and PW2 would suggest that the petitioner had



moved the property and that there is nothing on record to disbelieve their version that the petitioner intended to take the vehicle dishonestly and moved the vehicle.

11. In the light of the evidence adduced on the side of the prosecution, this Court finds that there is no infirmity in the judgments of the Courts below convicting the petitioner for the offence under Section 379 of the IPC. Hence, the finding of guilt of the Courts below, is confirmed. However, considering the nature of the allegations and the evidence adduced, this Court is of the view that the sentence of imprisonment can be reduced.

12. Accordingly, it is ordered as follows:

(i) The conviction of the petitioner by the Courts below, for the offence under Section 379 of the IPC, is confirmed.

(ii) The petitioner is sentenced to undergo six months of rigorous imprisonment instead of one year rigorous imprisonment and to pay a sum of Rs.1,000/- in default to undergo simple imprisonment for one month.



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(iii) The period of sentence already undergone by the

petitioner, if any, shall be set off under Section 428 Cr.P.C;

13. Accordingly, the Criminal Revision Case stands partly allowed.

11.12.2024

Index: Yes/No

Speaking/Non-speaking order

Neutral citation: Yes/No.

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To

1. The I Additional District and Sessions Judge,
Coimbatore

2. The Judicial Magistrate No.I,
Vellore.

3. The Inspector of Police,
M-3 Kovilpalayam Police Station,
Kovilpalayam, Coimbatore.

4. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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