



CRL RC. No.1296 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2025

PRONOUNCED ON : 28.01.2025

CORAM

THE HONOURABLE MR JUSTICE SUNDER MOHAN

CRL RC. No.1296 of 2024

and

CrI.M.P.No.15345 of 2024

Dhagira @ Dhagira Bee ... Petitioner / Accused

Vs

The Inspector of Police,
Railway Police Station,
Salem District. ... Respondent / Complainant

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 of Cr.P.C., to set aside the concurrent judgment of the I Additional District and Sessions Judge, Salem in C.A.No.107 of 2023 dated 08.04.2024 confirming the order dated 17.05.2023 in S.C.No.83 of 2019 on the file of the learned Chief Judicial Magistrate, Salem.

For Petitioner : Mr.R.Rajan
for Mr.B.Vasudevan
(appeared through VC)

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



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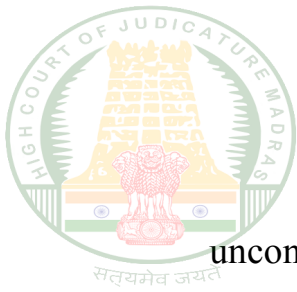
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ORDER

This Criminal Revision Case is filed challenging the judgment made in C.A.No.107 of 2023 dated 08.04.2024 on the file of the learned I Additional District and Sessions Judge, Salem, confirming the conviction and sentence passed in S.C.No.83 of 2019 dated 17.05.2023 on the file of the learned Chief Judicial Magistrate, Salem.

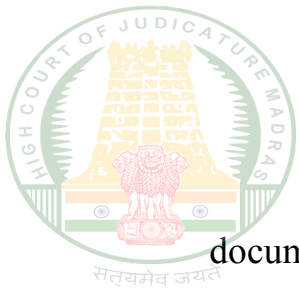
2. It is the case of the prosecution that the defacto complainant and his wife [PW1 & PW2] are residents of Kerala; that the defacto complainant's sister was residing in Salem; that on 05.07.2013, the defacto complainant and his wife came to Salem and in order to return to their native place, came to the Salem Railway Station on 08.07.2013 at about 7.45 a.m.; that while they were waiting for the arrival of Danbad Alapuzha Express, the petitioner along with a male introduced themselves as married couple and that they were travelling to Shornur; that the petitioner and her husband offered coffee; that PW1 drunk the coffee and since PW2 refused to take coffee, the petitioner's husband offered Mango juice and after drinking, both PW1 and PW2 fell



unconscious; that the petitioner and her husband thereafter took away jewels weighing 52 gms and a cell phone from the defacto complainant; that on coming to know that PW1 and 2 were unconscious in the compartment, they were taken to the hospital and were treated by the railway police; that on the complaint of PW1, an FIR was registered in Cr.No.339 of 2012 by the Salem Railway Police Station for the offences under Sections 379, 328 r/w 34 of the IPC.

3. PW8, the Inspector of Police, took up the investigation and after examination of the witnesses, arrested the petitioner and filed a final report before the jurisdictional Magistrate who thereafter, committed the case to the Sessions Court. The case was thereafter, made over to the learned Chief Judicial Magistrate, Salem. Since A1 [petitioner's husband] was absconding, the case against him was split up and the petitioner was tried separately by the learned Chief Judicial Magistrate in S.C.No.83 of 2019.

4. The prosecution had examined 8 witnesses as PW1 to PW8 and marked 22 documents as Ex.P1 to Ex.P22, besides one material object [M.O.1]. The petitioner neither examined any witnesses nor marked any



documents. Test Identification Report [CW1] marked as court document.

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5. The trial Court found that PW1 had identified the petitioner and also had identified the jewels recovered from the petitioner holding the petitioner guilty of the offences under Section 328 and 394 of the IPC and sentenced her to two years imprisonment and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month each, for both the offences. The sentences imposed were directed to run concurrently. On appeal, the appellate Court confirmed the judgment of conviction and sentence. Hence, the revision.

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

7. The learned counsel for the petitioner would submit that the evidence of PW1 cannot be believed; that the prosecution version as regards the manner in which the investigating officer fixed the petitioner as an accused is improbable and that the co-accused, who was tried separately, was subsequently acquitted by the trial Court in S.C.No.79 of



2022, vide judgment dated 27.09.2024 and therefore, the petitioner also deserves to be acquitted.

8. The learned Government Advocate (Crl. Side) *per contra* submitted that the evidence against A1 [petitioner's husband] and the evidence against this petitioner before the trial Court, were different and that the acquittal of A1 would not enure to the benefit of the petitioner; and that A1 was not identified by the witness and no recovery was made from him. He further submitted that the Courts below had considered the evidence adduced on the side of the prosecution in the proper perspective and there is no reason to interfere with the same, and therefore, prayed for dismissal of the revision.

9. This Court considered the rival submissions made by the learned counsel on either side and perused the materials available on record.

10. As stated earlier, the prosecution had examined 8 witnesses. PW1 is the defacto complainant and PW2 is his wife. PW2 had identified the accused during her examination in Court and also in the test identification parade. The evidence of PW1 and PW2, is cogent and

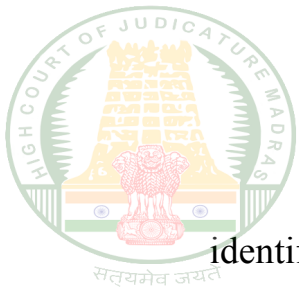


convincing. They have clearly deposed that pursuant to drinking the coffee and juice offered by the petitioner and her husband, they fell unconscious and when they regained consciousness, they found that their jewels and mobile phone were missing and suspected the petitioner and her husband.

11. PW4 had deposed that the petitioner and her husband asked him to assist them in pledging the articles and since he knew the petitioner's husband, he assisted them.

12. PW8, the investigating officer on secret information arrested the petitioner on 11.11.2013 and on her confession, seized the articles from a jewellery shop along with the driving licence of the petitioner's husband and thereafter, arrested the petitioner's husband. The witnesses have identified the stolen articles.

13. Both the Courts below had believed the evidence of PW1 and 2 and the other witnesses and found that the prosecution has established its case beyond reasonable doubt. Further, though, the petitioner's husband was acquitted by the trial Court, it is seen that the witnesses had not



identified him in Court and there is no recovery from him. Therefore, the acquittal of petitioner's husband by the trial Court, would not come to the aid of the petitioner in any manner.

14. Therefore, this Court on perusal of the impugned judgment and the evidence of the witnesses, finds that the judgments of the Courts below have been passed based on a proper appreciation of the evidence adduced by the prosecution and therefore, there is no infirmity in the said judgment.

15. The learned counsel for the petitioner pleaded that the petitioner, a lady, has to take care of her children; that there are no previous cases against the petitioner; and that the sentences imposed on her may be reduced.

16. Considering the above fact, while confirming the finding of guilt, this Court is of the view that the sentences imposed on the petitioner can be modified. Accordingly, the sentence imposed on the petitioner for the offence under Sections 328 and 394 of the IPC is



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reduced and the petitioner is directed to undergo one year imprisonment and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one month, for each of the offences. The sentences are directed to run concurrently. The fine amount, if any paid, shall be adjusted towards the fine amount now imposed by this Court. The period of sentence already undergone by the petitioner is directed to be set off under Section 428 Cr.P.C.

17. With the above modification, the Criminal Revision Case stands partly allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

28.01.2025

Index: Yes/No
Speaking/Non-speaking order
Neutral citation: Yes/No.

Issue order copy today.

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To

1. The I Additional District and Sessions Judge,
Salem.
2. The Chief Judicial Magistrate,
Salem.



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3. The Inspector of Police,
Railway Police Station,
Salem District.
4. The Superintendent of Prisons,
Central Prison for Women,
Sub Jail, Salem.
5. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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Pre-delivery order in
Crl.R.C.No.1296 of 2024

28.01.2025