



Crl.RC.Nos.1411 & 1442 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

CORAM :

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.Nos.1411 & 1442 of 2024

and Crl.M.P.No.16096 of 2024 in Crl.R.C.No.1442 of 2024

Crl.R.C.No.1411 of 2024

Rameejkhan .. Petitioner / A2

v.

The State Rep. by,
Inspector of Police,
Veerapandi Police Station,
Tiruppur City, Tiruppur District.
(Crime No.655 of 2021) .. Respondent/complainant

Criminal Revision Case filed under Section 438 r/w 442 of BNS, to call for the records and set aside the conviction and sentence imposed in the judgment dated 24.07.2024 made in C.A.No.60 of 2022 on the file of the learned I Additional District and Sessions Judge, at Tiruppur confirming the judgment dated 19.04.2022 made in C.C.No.261 of 2021 on the file of the learned Judicial Magistrate No.IV, Tiruppur, by allowing the criminal revision petition.

Crl.R.C.No.1442 of 2024

Gowrishankar .. Petitioner / A1

v.

The State Rep. by,
Inspector of Police,
Veerapandi Police Station,
Tiruppur City, Tiruppur District.



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(Crime No.655 of 2021)

.. Respondent/complainant



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Criminal Revision Case filed under Section 438 r/w 442 of BNS, to call for the records and set aside the conviction and sentence imposed in the judgment dated 24.07.2024 made in C.A.No.61 of 2022 on the file of the learned I Additional District and Sessions Judge, at Tiruppur confirming the judgment dated 19.04.2022 made in C.C.No.261 of 2021 on the file of the learned Judicial Magistrate No.IV, Tiruppur, by allowing the criminal revision petition.

For Petitioners : Mr.K.Sudhakar
in both cases
For Respondent : Mr.S.Udaya Kumar
in both cases Government Advocate (Crl.Side)

COMMON ORDER

These Criminal Revision Cases have been filed challenging the judgments dated 24.07.2024 made in Crl.A.Nos.60 and 61 of 2022 on the file of the learned I Additional District and Sessions Judge, at Tiruppur confirming the conviction and sentence imposed on the petitioners/A1 & A2 vide judgment dated 19.04.2022 made in C.C.No.261 of 2021 on the file of the learned Judicial Magistrate No.IV, Tiruppur.

2. It is the case of the prosecution that the defacto complainant had parked his car in front of his house in a vacant place; that since he was



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infected with COVID-19 virus, he was taking treatment in a hospital on

28.05.2021; that he had sent his family to his native village; that he returned to his house on 14.06.2021 at 6.00 a.m., with his family and found that his vehicle was missing; and that thereafter he had lodged a complaint to the respondent, which was registered in Cr.No.655 of 2021 for the offence under Section 379 of the IPC against unknown accused.

3. The complaint was registered by PW7, the Head Constable attached to the respondent police station. Thereafter, the investigation was conducted by PW8, who went to the scene of the occurrence, prepared the observation Mahazar [Ex.P12], examined two witnesses, besides arresting A1, the petitioner in Crl.R.C.No.1442 of 2024 and on his confession, arrested A2, the petitioner in Crl.R.C.No.1411 of 2024 and seized the car said to have been stolen. PW9, the Inspector of Police, took up the further investigation and filed the final report against the petitioners/accused for the offence under Section 379 of the IPC.



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4. The prosecution had examined nine witnesses as PW1 to PW9, marked 17 documents as Ex.P1 to Ex.P17 and marked two material objects viz., M.O.1 & M.O.2, to establish its case. The accused had not let in oral or documentary evidence.

5. The trial Court, on considering the oral and documentary evidence, convicted the petitioners for the offence under Section 379 of the IPC and sentenced each of them to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for nine months. On appeal, the appellate Court confirmed the judgment of conviction and sentence imposed on the petitioners.

6. Heard Mr.K.Sudhakar, learned counsel for the petitioners/A1 & A2 and Mr.S.Udaya Kumar, learned Government Advocate (Crl. Side), appearing for the respondent/State.



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7. The learned counsel for the petitioners would submit that there is absolutely no evidence as against A2; that the conviction was recorded only on the confession of A1 made to the police; that the conviction against A1 also cannot be sustained, since there are vital contradictions in the evidence of the witnesses, who allegedly witnessed the confession and seizure of the car from A1; and that except for the seizure, there is no other evidence to connect the petitioners with the alleged occurrence.

8. The learned Government Advocate (Crl.Side), *per contra* submitted that A1 is an habitual offender and there are three previous cases against him, which are either pending trial or under investigation; that he has one similar previous case pending; that the seizure has been established by the prosecution; and therefore, the said circumstances along with the other evidence on record would conclusively establish that the petitioners are guilty of the offence.



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9. This Court has considered the rival submissions and perused the records.

10. Admittedly, the only evidence available as against A2, the petitioner in Crl.RC.No.1411 of 2024, is the confession of A1. There is no seizure made at the instance of A2. The allegation against A2 is that he was found along with A1 at the time of arrest. This Court is of the view that the conviction on the basis of such evidence cannot be sustained as against A2. Therefore, this Court is of the view that in the absence of any evidence to hold A2/petitioner in Crl.R.C.No.1411 of 2024 guilty of the offence, the conviction for the offence under Section 379 of the IPC cannot be sustained against him and accordingly, A2 has to be acquitted of the charge under Section 379 of the IPC.

11. As against A1, the petitioner in Crl.R.C.No.1442 of 2024, the



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evidence admittedly is that on 14.04.2021 at about 1.00p.m., when the respondent were conducting a routine vehicle check up, the petitioners/A1 & A2, who were coming in a two wheeler were intercepted and when questioned, they gave evasive answers and thereafter, A1 is said to have given a confession admitting to the theft of the car and consequently, was arrested at about 1.00 p.m., on the same day.

12. It is further the case of the prosecution that the seizure was made at 3.15 p.m. and at a place called Mangalam Ganapathypalam near the

house of A1 on his confession and thereafter, the car was brought to the police station at about 4.00 p.m. PW8 confirms this fact in his deposition. However, PW1 would state that he was called to the police station on 14.06.2021 at 1.00 p.m., where he identified the vehicle at the police station and that he had also seen the accused at the police station. That apart, PW5 one of the witness to the seizure mahazar would state that the seizure was made at Sulthanpet near Mangalam, whereas PW6 would state that the



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seizure was made at Managalam, Ganapathypalayam.

13. In the light of the above infirmities with regard to time at which the seizure was made, this Court is of the view that the seizure itself is doubtful. That apart, the manner in which the petitioners were arrested viz., that they were intercepted during a routine vehicle check up and they confessed of the alleged crime, also appears to be improbable.

14. Further, it is also well settled that the conviction of an accused for the offence under Section 379 of the IPC cannot be based only on the basis of the seizure of the alleged stolen property from him. There is no other evidence to connect the petitioners with the alleged theft. In such circumstances, this Court is of the view that it would be highly unsafe to convict the petitioners for the offence under Section 379 of the IPC.

15. Accordingly, these Criminal Revision Cases are allowed. The conviction and sentence imposed by the learned Judicial Magistrate No.IV,



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Tiruppur vide judgment dated 19.04.2022 in C.C.No.261 of 2021 and the judgments dated 24.07.2024 made in C.A.Nos.60 & 61 of 2022 by the learned I Additional District and Sessions Judge, at Tiruppur, confirming the conviction and sentence passed by the trial Court, are set aside. The petitioners/A1 & A2 are acquitted of the charge and set at liberty, unless their presence is required in connection with any other case. The fine amount, if any, paid by the petitioners shall be refunded. Bail bond, if any, executed shall stand discharged.

08.01.2025

Index : yes/no
Neutral citation : yes/no
Speaking/Non-speaking order
ars

To

1. The I Additional District and Sessions Judge,
Tiruppur.
2. The Judicial Magistrate No.IV,
Tiruppur.

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3. The Inspector of Police,
Veerapandi Police Station,
Tiruppur City,
Tiruppur District.
4. The Superintendent of Prisons,
Central Prison, Coimbatore.
5. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN,J.

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