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BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

Reserved on	:	24.04.2025
Pronounced on	:	28.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C.(MD). Nos.448 and 504 of 2024

Crl.R.C(MD).No.448 of 2024:

Gomathi

... Petitioner/Appellant/ Accused No.2

Vs.

The State Represented by
The Inspector of Police,
Kumbakonam, West Police Station,
Crime No.1197 of 2021

... Respondent/Respondent/Complainant

PRAYER:

Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the conviction and sentence passed in C.C.No.56 of 2023 dated 09.10.2023 by the learned Judicial Magistrate No.1, Kumbakonam and confirmed by the Principal District and Sessions Judge, Thanjavur in C.A.No.240 of 2023 dated 07.02.2024



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For Petitioner : Mr.S.Mahendrapathy
for Mr.S.Sankar

For Respondent : Mr.B.Thanga Aravindh,
Government Advocate(Crl.Side)

Crl.R.C(MD).No.504 of 2024:

Meenakshi
(Now confined in Special Prison for Women,
Trichy) ... Petitioner/Appellant/ Accused No.1

Vs.

State rep.by Sub Inspector of Police,
Kumbakonam West Police Station,
Thanjavur District.
(Cr.No.1197 of 2021) ... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the conviction and sentence passed in C.C.No.56 of 2023 dated 09.10.2023 by the learned Judicial Magistrate No.1, Kumbakonam and confirmed by the Principal District and Sessions Judge, Thanjavur in Criminal Appeal No.42 of 2024 dated 10.04.2024.

For Petitioner : Mr.S.Sekar
for Mr.P.Manimaran
For Respondent : Mr.B.Thanga Aravindh,
Government Advocate(Crl.Side)



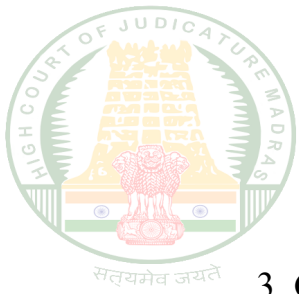
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COMMON ORDER

Since these Criminal Revision Cases are arising out of the same crime, these cases are taken up for hearing together and disposed of by way of this common order.

2.Accused Nos. 1 and 2 in C.C.No. 56 of 2023 on the file of the learned Judicial Magistrate No.I, Kumbakonam, Thanjavur District have filed this criminal revision challenging the conviction and sentence passed against them. And the same also confirmed in Crl.A.No. 240 of 2023 and Crl.A.No. 42 of 2024 the details are as follows:-

SL. No.	Crl.RC. (MD).No.	Rank of the accused and Name	C.C. No.	Crl.A. No.	Charges proved under sections	Punishment (Imprisonment and Fine)
1	448/2024	A-2 Gomathi	56/ 2023	240/ 2023	U/s.379 IPC	Three years rigorous imprisonment and fine of Rs.10,000/- in default of two months simple imprisonment.
2	504/2024	A-1 Meenakshi	56/ 2023	42/ 2024	U/s.379 of IPC	Three years rigorous imprisonment and fine of Rs.10,000/- in default to undergo further simple imprisonment for two months.



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3. Case of the prosecution:-

On 26.08.2021 at 03.10 p.m., while boarding Mayiladuthurai Bus, the defacto complainant's bag containing 5 sovereign Thali chain, bracelet and gold hook was missing. She gave the complaint under Ex.P1 to the respondent police and the respondent police registered the case on 03.09.2021. The PW7, after registration of FIR under Ex.P7, went to the occurrence place and prepared observation mahazar Ex.P8 and rough sketch Ex.P9 in the presence of PW3 and PW4. PW7 on 18.12.2022 at about 06.30 p.m. enquired about the queer company of A1 and A2 in the presence of PW5 and PW8 and they confessed stating that they were involved in number of theft cases. Thereafter, they were arrested and confined in prison. PW9 inspector of police took the police custody of the said petitioners on 01.01.2023 and confession was recorded and they disclosed about the material objects gold chain, bracelet and hook and the same were recovered under Ex.P14 in the presence of PW5 and PW8. Thereafter, the investigating officer PW9 completed the investigation and filed the final report before the Learned Judicial Magistrate No. I, Kumbakonam and the same was taken on file in C.C.No. 56 of 2023 under section 379 of I.P.C. against A1 and A2. Thereafter the learned judicial magistrate summoned the accused and served the copies under section 207 of Cr.P.C. to them and framed the necessary charges and



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questioned them and they pleaded not guilty and they stood for trial.

4. The prosecution to prove the case examined PW1 to PW9 and marked Ex.P1 to P14. The Learned Trial Judge question the accused under section 313 of Cr.P.C. by putting the incriminating material available against them in the prosecution evidence and documents. They denied as false. On the side of the accused, neither witness was examined nor documents was marked.

5. The Learned Trial judge after considering the evidence and documents and the answer given by the accused during the 313 questioning convicted the accused under section 379 of I.P.C. The Learned Trial Judge accepted the case of the prosecution that the accused are habitual offenders and have previous case and also were convicted for similar occurrence in C.C.No. 55 of 2023 and imposed the maximum punishment of three years rigorous imprisonment and fine of Rs.10,000/- with default sentence of two months simple imprisonment. Challenging the same accused No.1 filed the appeal No. 42 of 2024 and accused No. 2 filed the appeal in CrI.A.No. 240 of 2023 on the file of the principal sessions Judge, Thanjavur. The appellate Court also confirmed the same and aggrieved over the same, the accused filed the above revisions.



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6. The Learned counsel for A2 submitted that except the confession of A1, there is no other material available to implicate him. Further, the charge against them is 379 of I.P.C. Even as per the prosecution case the recovery was made only from A1 and on the basis of the confession of A1 he is falsely implicated. Further, no test identification parade was conducted. Accused was shown in the police station to PW1. There is a delay of five days in registering the case and the same was not explained. Hence he seeks for acquittal.

7. The learned counsel for A1 reiterated the above submission and also argued that recovery was not proved and hence he seeks for the acquittal.

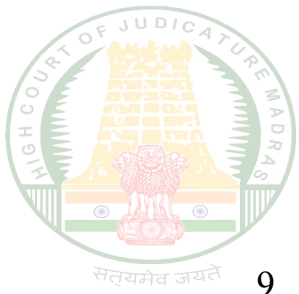
8. The Learned Additional Public Prosecutor vehemently submitted that the petitioners have number of previous cases and they have followed innovative method of committing theft in the buses with active participation using the following *modus operendi*:

A1 would commit theft of the passengers and she would transfer the same to A2 and A2 would further pass on to A3 and A3 would leave the place and pose as if they were no way connected with each other. After the occurrence,



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they would meet and divide the proceeds of the theft. In the said circumstances PW5 clearly deposed about their queer company in the bus stand and they were jointly seen active in the bus stand. They were jointly arrested and they made the confession about the *modus operandi*. Hence the prosecution clearly proved the case. The recovery was made and the said articles were identified by PW1. Even though one of the recovery witness partly turned hostile, but he affirmatively deposed that the disclosure statement of A1 and he and the officers went to the house of relative of A1 and recovery was made. Other recovery witness clearly deposed about the recovery made on the basis of the confession of A1. Therefore, both Courts below convicted the accused and considering the previous antecedents and the earlier conviction for similar offence, the trial Court imposed the maximum punishment of three years rigorous imprisonment. Hence, there is no circumstance to interfere with. He further humbly prayed that they are habitual offenders committing similar type of theft in the public transport vehicle targeting marginal people, gullible poor people who are travelling in the bus and they are seriously affected due to their unending theft in the bus and in various places and hence he seeks for the confirmation of the maximum sentence imposed by the both the Courts in the interest of the society.



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

10. Now the question in these revisions is whether the conviction and the maximum sentence imposed against the petitioners under section 379 of I.P.C. and 379 r/w.109 of I.P.C. is legally correct.

11. The *modus operandi* followed by the accused as explained by the learned additional public prosecutor shocks the judicial conscience of this Court. The accused all teamed up and they boarded the bus. One of them looted the article of the passengers in clandestine manner and transfer the same to the other accused and other accused further passed on to another accused and each accused alighted separately and created a scene as if they were no way connected with each other. After the occurrence, they have divided the proceeds of the theft. In this type of *modus operandi*, the burden of the prosecution is to prove their strange and weird company in the bus stand in suspicious manner. In this case PW5 clearly deposed about their queer company in the bus stand on 18.12.2022. They were enquired by PW5 and the accused made contradictory statement

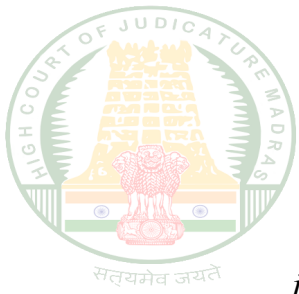


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regarding their residence. Finally they disclosed about their nativity as Andhra Pradesh. This is the material circumstance to legitimately infer their involvement in the occurrence. A1 gave categorical disclosure statement about the involvement of A2 and A3. The said disclosure statement was legally proved. The same is admissible as held by the Hon'ble Supreme Court in the case of ***Mehboob Ali v. State of Rajasthan***, reported in **2016 14 SCC 640**:

13. For application of Section 27 of the Evidence Act, admissible portion of confessional statement has to be found as to a fact which were the immediate cause of the discovery, only that would be part of legal evidence and not the rest. In a statement if something new is discovered or recovered from the accused which was not in the knowledge of the police before disclosure statement of the accused is recorded, is admissible in the evidence.

15. It is apparent that on the basis of the information furnished by accused Mehboob Ali and Firoz and other accused, Anju Ali was arrested. The fact that Anju Ali was dealing with forged currency notes was not to the knowledge of the police. The statement of both the accused has led to discovery of fact and arrest of co-accused not known to police. They identified him and ultimately statements have led to unearthing the racket of use of fake currency notes. Thus the information furnished by the aforesaid accused persons vide information memos is clearly admissible which has led to the



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identification and arrest of accused Anju Ali and as already stated from possession of Anju Ali fake currency notes had been recovered. As per information furnished by accused Mehboob and Firoz vide memos Exts. P-41 and P-42, the fact has been discovered by police as to the involvement of accused Anju Ali which was not to the knowledge of the police. Police was not aware of accused Anju Ali as well as the fact that he was dealing with fake currency notes which were recovered from him. Thus the statement of the aforesaid accused Mehboob and Firoz is clearly saved by Section 27 of the Evidence Act. The embargo put by Section 27 of the Evidence Act was clearly lifted in the instant case. The statement of the accused persons has led to the discovery of fact proving complicity of the other accused persons and the entire chain of circumstances clearly makes out that the accused acted in conspiracy as found by the trial court as well as the High Court

Therefore both the Courts below had accepted the said disclosure statement and their evidence relating to the disclosure which is cogent and trustworthy. Hence, this Court has no reason to set aside the said finding.

12. The involvement of A2 and A3 is proved on the basis of the disclosure statement of A1 coupled with their strange company in the bus stand during the previous day occurrence of the theft of PW1's articles has happened. Their false



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disclosure about the address of their residence also is another incriminating circumstance.

13. P.W.5 clearly deposed about the involvement of all the accused and his evidence is cogent and trustworthy. There is no suggestion that he had motive against the accused to falsely implicate them in the above case.

14. Even though one of the recovery witnesses partly turned hostile, but his evidence relating to the disclosure statement and arrival to A1's relative's house along with A1 is corroborated by the evidence of the another recovery witness PW8 and the officer PW9 also clearly deposed about the disclosure statement. In these type of cases even if one of the recovery witnesses partly turned hostile, there is no legal impediment to believe the evidence of PW6 and the same has been fortified by the Hon'ble Supreme Court in the case in the case of *Attar Singh vs. State of Maharastra* reported in **2013 11 SCC 719** and the Hon'ble Supreme Court has held that if some portion of the statement of hostile witness inspires confidence, it can be relied upon and also if the evidence of said hostile witness is corroborated by other evidence there is no legal bar to convict the accused.



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15. A forceful submission was made about the five days delay of FIR in reaching the magistrate court. The said delay is not material when the FIR itself registered against unknown person and also there was no cross examination relating to the delay and also no prejudice was established as required under the principle laid down by the Hon'ble Supreme Court f ***Jafel Biswas vs. State of West Bengal*** reported in ***2019 (12) SCC 560***. The Hon'ble Supreme Court has held that mere delay in sending report itself cannot lead to the conclusion that trial is vitiated or the accused is entitled to be acquitted on the ground that FIR has been registered much later in time than shown. Also it is held that the accused has to prove prejudice was caused to him due to the delayed despatch of FIR.

16. The accused have not explained their odd company in the bus stand and the recovery made during their 313 of Cr.P.C. questioning.

17. Therefore in all the aspects the prosecution has proved the case beyond reasonable doubt and the same has been properly considered by the both the Courts below and there is no circumstance to interfere with the concurrent



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finding. In the said circumstance the conviction passed by the both the Courts below under section 379 of I.P.C against A1 and A2 is legally correct and this Court is inclined to confirm the same.

18. So far as the sentence of imprisonment of maximum period of imprisonment is concerned, the learned trial judge has taken into account the previous conviction in C.C.No. 55 of 2023 for the similar offence and also the following previous cases in various police stations.

<i>Accused</i>	<i>Section</i>	<i>CrimeNo.</i>	<i>PoliceStation</i>
A-1.Mrs.Meenatchi W/o Balaji	U/Sec.379 IPC	82/2015	Malayampalayam Police Station, Erode.
	U/Sec.379 IPC	999/2022	West Police Station, Kumbakonam
	U/Sec.379 IPC	997/2022	West Police Station, Kumbakonam
	U/Sec.379 IPC	1197/2021	West Police Station, Thanjavur
	U/Sec.379 IPC	186/2017	Thottiyam Police Station, Trichy
	U/Sec.379 IPC	498/2017	Fort Police Station, Trichy
A-2.Mrs.Gomathi W/o Mahesh	U/Sec.379 IPC	429/2006	Velankanni Police station, Velankanni
	U/Sec.379 IPC	999/2022	West Police Station, Kumbakonam
	U/Sec.379 IPC	997/2022	West Police Station, Kumbakonam

19. In view of the above circumstances this Court finds no reason to interfere with the sentence of imprisonment also. In the result this Court finds no merit in the submission of the learned counsel for the petitioners and all the revisions deserve to be rejected.



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20. Accordingly, all revisions are dismissed. The bail bond executed by the petitioner is cancelled and the respondent police is directed to secure the petitioner and confine them in prison to undergo the remaining part of sentence imposed in the C.C.No. 56 of 2023 on the file of the Judicial Magistrate No.I, Kumbakonam by order dated 09.10.2023.

21. Post the matters for reporting compliance on 23.06.2025.

28.04.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes/No

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To
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1. The Principal District and Sessions Judge,
Thanjavur.
2. The Judicial Magistrate No.I,
Kumbakonam, Thanjavur District.
3. The Inspector of Police,
Kumbakonam, West Police Station,
Thanjavur District.
4. The Sub Inspector of Police,
West Police Station,
Kumbakonam, Thanjavur District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
6. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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Pre-delivery common order made in
CrI.R.C.(MD). Nos.448 and 504 of 2024

28.04.2025