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Crl.R.C.No.1975 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.01.2026

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.1975 of 2023

Dhinakaran

... Petitioner

Vs.

State, represented by
The Sub Inspector of Police,
Yercaud Police Station,
Salem District.
(Crime No.129 of 2015)

... Respondent

Prayer: Criminal Revision Case filed under Section 397(1) and 401 of Criminal Procedure Code, 1973, to set aside the judgment dated 24.08.2023 passed by the I Additional District and Sessions Judge, Salem in C.A.No.87 of 2022 confirming the conviction and modifying the sentence imposed by the District Munsif – cum – Judicial Magistrate, Yercaud, Salem District in C.C.No.07 of 2022 by judgment dated 07.09.2022.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mr.R.Vinothraja

Government Advocate (Crl. Side)

ORDER



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This Criminal Revision Case has been filed by the petitioner against the judgment dated 24.08.2023 passed by the learned I Additional District and Sessions Judge, Salem in Crl.A.No.87 of 2022, confirming the conviction and modifying the sentence imposed on him by judgment dated 07.09.2022 passed in C.C.No.07 of 2022 by the learned Judicial Magistrate, Yercaud.

2. The case of the prosecution is that the petitioner had committed theft of 14.00 grams of gold and Rs.5,000/- in cash from the house of the defacto complainant and thus committed the aforesaid offence. On the complaint given by P.W1, F.I.R was registered for the offence under Sections 380 and 454 IPC. P.W6 is the Investigating Officer, who filed the final report against the petitioner.

3. The prosecution examined six witnesses and marked eleven documents. The trial Court found that the petitioner was guilty of the offences under Sections 380 and 454 of the IPC and sentenced him imprisonment as follows:



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Offence under Section	Sentence imposed
380 IPC	To undergo SI for three years and to pay a fine of Rs.1,000/- in default to undergo SI for three months.
454 IPC	To undergo SI for three years and to pay a fine of Rs.1,000/- in default to undergo SI for three months.
Sentences were ordered to run concurrently.	

4. On appeal, the appellate Court while confirming the conviction rendered by the trial Court had modified the sentence alone as follows:

Offence under Section	Sentence imposed
380 and 454 IPC	To undergo RI for two years for each section

5. The learned counsel for the petitioner would submit that the eye-witnesses examined by the prosecution, namely P.W.4 and P.W.5, turned hostile; that P.W.1, the defacto complainant is a hearsay witness; that the evidence of P.W.2, the mother of P.W.1 who stated that she saw the petitioner near their house and hence suspected his involvement does not inspire confidence; that the recovery of gold jewels has not been proved by the prosecution, as the seizure mahazar witness P.W.3 would state that he was not aware of the contents of the seizure as to what was seized; that the



witnesses had prior enmity with the petitioner; and that therefore, the prosecution cannot be sustained and the judgments of the courts below are liable to be set aside.

6. The learned Government Advocate (Crl. Side) for the respondent, *per contra*, would submit that even though P.W.4 and P.W.5 turned hostile, the evidence of P.W.1 and P.W.2 would show that the petitioner was present near the scene of occurrence on the date of occurrence and the recovery cannot be disbelieved merely because the witness stated that he was not aware of the contents and submitted that the concurrent findings of fact cannot be interfered with.

7. P.W.4 and P.W.5, who had allegedly seen the petitioner coming out of the house of the defacto complainant with the stolen articles turned hostile. P.W.1 is the defacto complainant and he has no personal knowledge as to what happened on the date of occurrence. He would admit that he came to know of the occurrence from the neighbours. He would also admit that his mother had not witnessed the said theft. P.W.2, the mother of P.W.1 would admit in her cross-examination that she did not know who



committed the theft in her house. In the light of the above admissions, this Court is of the view that the fact that the petitioner was seen outside the house of P.W.1 has not been established by the prosecution.

8. The next circumstance relied upon by the prosecution is the recovery said to have been made from the petitioner. The prosecution seeks to prove the recovery through the seizure mahazar witness P.W.3, who is the brother of P.W.1. P.W.3 would also state that the investigating officer examined him on the date of occurrence and obtained his signatures in certain documents. In the cross-examination, he would state that he was not aware of the contents of the documents and as to what articles were seized. In the light of the above evidence, P.W.3 evidence cannot be believed to prove the recovery. Further, P.W.6 the Investigating Officer in his cross-examination would state that the articles were not found at the place where the accused had told that he had kept. For that reason also recovery cannot be said to be a discovery of fact under Section 27 of the Indian Evidence Act and hence is of no avail to the prosecution in this case.

9. In view of the above infirmities, this Court is of the view that the prosecution has not established the case beyond reasonable doubt. The



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judgments of the courts below are perverse and therefore liable to be set aside.

10. As a result, this Criminal Revision Case is allowed, and the petitioner is acquitted of the charge. The conviction and sentence passed in C.A.No.87 of 2022, dated 24.08.2023 on the file of learned I Additional District and Sessions Judge, are set aside. The fine amount, if any, paid by the petitioner shall be refunded. Bail bond, if any, executed shall stand discharged.

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Index : Yes/No
Speaking Order/Non Speaking Order
Mac

To

1. The I Additional District and Sessions Court, Salem
2. The District Munsif – cum – Judicial Magistrate,
Yercaud, Salem District
3. The Sub Inspector of Police,



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Yercaud Police Station,
Salem District.

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4. The Public Prosecutor,
High Court, Madras.

SUNDER MOHAN, J.

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