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CRL RC No. 2202 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12-01-2026

PRONOUNCED ON : 19-01-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL RC No. 2202 of 2023

Ambrose

..Petitioner

Vs

State Rep. by
The Inspector of Police,
J-7, Velachery Police Station,
Velachery, Chennai.
Cr.No.963/2019

... Respondent

Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Cr.P.C., to call for the records and set aside the judgement dated 13.09.2023 made in Crl.Appeal No.289 of 2023 on the file of the learned VII Additional District and Sessions Judge at Chennai which confirmed the judgement dated 24.04.2023 made in C.C.No.267 of 2022 on the file learned XVIII Metropolitan Magistrate at Saidapet and acquit the Petitioner by allowing this revision and thus render justice.

For Petitioner:

Mr. P.G.Thiyagu
for Mr.S.Amarnath

For Respondent:

Mr.S.Balaji,
Government Advocate (Crl.Side)

ORDER

The revision challenges the judgment dated 13.09.2023 passed in Crl.A.No.289 of 2023 by the learned VII Additional District and Sessions Judge, Chennai confirming the judgment dated 24.04.2023 passed in CC



No.267 of 2022, by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, convicting the petitioner for the offence under Section 381 of the IPC and sentencing him to undergo imprisonment for two years and to pay a sum of Rs.5,000/- as a fine, in default to undergo simple imprisonment for three months.

2. The gist of the prosecution case is that the petitioner was working as a driver of a cash filling vehicle of company by the name 'CMS Connecting Commerce', which is an outsourcing company involved in the business of filling up the cash in the ATMs in and around Chennai; that on 19.12.2019 at about 2.30 a.m., PW1 and PW10 along with one Beer Mohameed Ansari received Rs.87 Lakhs from their company for filling up the ATMs at Chennai and took the cash in a silver-coloured Xylo car bearing Regn.No.TN07 CH 3733 driven by the petitioner; that they filled Kotak Mahindra Bank ATM with Rs.3 Lakhs cash; that at Ramanujam IT Park, filled two ATMs with cash of Rs.10 Lakhs and Rs.15 Lakhs; that thereafter, they filled an ATM at Madhya Kailash with a sum of Rs.2 Lakhs; that at about 5.00 p.m., they went to Vijaya Bank ATM at Vijaya Nagar to fill up Rs.5 Lakhs; that in front of the ATM, the security guard officer Beer Mohammed Ansari stood guard;



that it took 45 minutes to fill up the said cash; that when PW1 and PW10 came out of the ATM they found that the security guard as well as the petitioner along with the vehicle, which contained the cash of Rs.52 Lakhs, were missing; and that at about 8.00 p.m., they lodged a complaint before the respondent herein which was registered in Cr.No.963 of 2019, for the offence under Section 381 of the IPC.

3. The prosecution had examined 12 witnesses, viz., PW1 to PW12 and marked 14 documents, viz., Ex.P1 to Ex.P14. The car and cash of Rs.51,48,250/- were marked as M.O.1 and M.O.2. The accused neither examined any witness nor marked any document on his side.

4. On investigation, the respondent filed a final report against the petitioner as well as one Mani @ Manimaran, who was arrayed as A2 and who had allegedly instigated the petitioner to commit the aforesaid offences. The trial court found that the case against A2 was not proved and acquitted him of the charge under Section 381 of the IPC and found the petitioner guilty and sentenced him as stated above. The appellate Court confirmed the said conviction. Hence, this revision.



5. The learned counsel for the petitioner would submit that the prosecution suffers from several infirmities; that all the cash filling vehicles had a GPS tracking feature; that the location of the vehicle was not informed to the police; that no cash was seized from the petitioner; that the prosecution had not established that the car was loaded with Rs.87 Lakhs as claimed by the defacto complainant; that no ledgers or documents were produced to prove the filling of the ATMs and the fact that the car contained cash of Rs.52 Lakh; that the said Beer Mohammed Ansari was not examined by the prosecution; that PW5 who spoke about the alleged recovery made from certain third parties, turned hostile; that the evidence of PW6 who is an employee of the said company viz., CMS does not inspire confidence; that the alleged relatives of the petitioner viz., Dominic and Julia, from whose houses the seizure of cash were made were neither examined as witnesses nor made an accused; that there are several infirmities; and in such circumstances, the judgments of the Courts below suffer from perversity and are liable to be set aside.

6. The learned Government Advocate (Crl.Side) *per contra* submitted that the trial Court and the appellate Court had considered the evidence on



record in the proper perspective and that since the judgments do not suffer from any infirmity, this Court in exercise of its power of revision cannot re-appreciate the evidence; that there is no reason to disbelieve PW1 and PW10, whose evidence inspires confidence and proves the commission of the offence.

7. (i) As stated above, the prosecution had examined 12 witnesses. PW1 and PW10 are the vital witnesses for the prosecution who speak about the taking of the cash in the vehicle and filling up of the cash in various ATM centres as stated above. Both are employees of the said company, CMS. The other witnesses, who corroborated the evidence of PW1 and PW10 viz., PW2 and PW3 are hearsay witnesses. PW4 was working as a Branch Manager in CMS and would corroborate the evidence of other witnesses. He is also a hearsay witness.

(ii) PW5 is the witness for the arrest and seizure, who turned hostile. PW6 is an employee of CMS, who is said to have witnessed the arrest and seizure of cash. PW7 and PW8 are the witnesses who had attested the confession of the petitioner. PW9 is the witness to the Observation Mahazar



[Ex.P12]. PW11 is the Inspector of Police, who registered the FIR and conducted the initial part of the investigation and handed over the investigation to PW12, who had filed the final report.

8. It is the case of the prosecution that the petitioner, who was working as a driver, along with one Beer Mohammed Ansari, who was the security guard had travelled along with PW1 and PW10 in the vehicle. The said Beer Mohammed Ansari, for the reasons best known to the prosecution, has not been examined. He was also said to be absconding along with the petitioner. In such circumstances, his non-examination in the Court, although he was cited as a witness by the prosecution, has not been explained by the prosecution. Admittedly, the vehicle driven by the petitioner had a GPS tracking system. This is confirmed by PW2, an employee of the said company, in his cross examination. However, there is no explanation by the prosecution as to why the vehicle was not tracked by the GPS system. The appellate Court had held that there is a possibility of failure in the GPS tracking system. However, it is not the prosecution's case that the GPS system had failed.



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9. It is the case of the prosecution that the amount stolen by the petitioner was recovered on his confession in the houses of two of his relatives; that a sum of Rs.19,08,250/- was seized from one Dominic in his house at Shastri Nagar and a sum of Rs.32,40,000/- was seized from one Julia in her house at Vyasarpadi. PW5 examined to prove the seizure turned hostile. PW6 is an employee of the said Company, CMS and he would state that both the relatives of the petitioner were arrested by the Inspector of Police. He would also admit that he did not know the exact amount said to have been seized from the two houses. PW6, as stated above, is an interested witness.

10. Be that as it may. The prosecution had not explained why the two persons from whom the alleged seizure was made were neither examined as witnesses nor made accused. If it is the case of the prosecution that they had knowingly received the stolen property from the petitioner, they ought to have been made accused. It is also not established by the prosecution that these two persons were related to the petitioner.



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11. Above all, the ledger of the company, to prove that cash of Rs.87 Lakhs was taken in the vehicle in the morning of the day of occurrence and it was deposited in various ATMs, was not seized by the investigating officer. PW1, PW2 and PW10 who speak about the fact that the petitioner fled with the vehicle, have admitted that whenever an amount is taken from the bank, an entry would be made in the ledger and entries would also be made whenever there is a deposit in any ATM. None of the documents were marked by the prosecution.

12. As stated above, the said Beer Mohammed Ansari, who was also present at the time of the occurrence and was originally cited as a witness by the investigating officer, has not been examined. There are several lacunae in the prosecution case, which have been elaborated above.

13. Therefore, in the light of the above discussions, it would be highly unsafe to hold the petitioner guilty of the offence of theft. Hence, the Criminal Revision Case stands allowed. The judgments of the Courts below, are set aside. The petitioner is acquitted of the charge. The fine amount, if



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any, paid by the petitioner shall be refunded. The bail bond, if any, executed shall stand discharged.

19-01-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To

1. The VII Additional District and Sessions Judge,
Chennai
2. The XVIII Metropolitan Magistrate,
Saidapet, Chennai.
3. The Inspector of Police,
J-7, Velachery Police Station,
Velachery, Chennai.
4. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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**Pre-delivery order in
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