

IN THE III ADDITIONAL SESSIONS COURT, CHENNAI.

Present: **Tmt. K.Geetha Rani, M.A, M.L.,**
III Additional Sessions Judge.

Friday, the 25th day of July, 2025

Criminal Appeal No.496/2023
[CNR No.TNCH01-035676-2023]

against
C.C.No.692 of 2023

From which Court the appeal is : The learned XVIII Metropolitan
Preferred Magistrate, Saidapet, Chennai

Number of the case in that court : C.C.No.692 of 2023

Name and description : S. Janaardhan,
of the Appellant/Accused S/o.Subramani,
Erniswaran Kovil,
2nd Cross Street, Erananur, Kattivakkam,
Thiruvallur – 600 057.

Name and description of the : The state Represented by,
Respondent/Complainant The Sub Inspector of Police,
J-6, Thiruvanmiyur, Chennai.
(Crime No.47/2022)

Judgment passed by the Trial : In the result, the accused 1 and 2 are
Court found guilty u/s.379 IPC and the 3rd
accused is found guilty u/s.411 of IPC
they were convicted and sentenced them
to undergo 2 years of Rigorous
imprisonment and to pay a fine amount
for a sum of Rs.5000/- failing which the
accused to undergo 3 months simple
imprisonment and also the 3rd accused is
found guilty u/s. 471 of IPC convicted and

sentenced him to undergo one year of Rigorous imprisonment and to pay a fine for a sum of Rs.3000/- failing which the accused to undergo one month simple imprisonment and ordered the sentences to run concurrently. Further the accused 4 and 5 were not found guilty u/s.411 of IPC and they were acquitted u/s.248(1) of Cr.P.C.

Result of this Court : In the result, the Criminal appeal is dismissed. The conviction and sentence imposed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai passed in C.C.No.692/2023, dated 04.08.2023 is hereby confirmed. The Trial Court is directed to take steps to secure the accused and sentence him to suffer the remaining period of sentence.

Date of filing of C.A. : 25.08.2023
 Date of taken of file : 19.09.2023
 Date of Hearing : 03.07.2025
 Date of Judgment : 17.07.2025

This Criminal Appeal came on 03.07.2025 for final hearing before this Court in the presence of M/s. R.Vivekanathan, S.Senthilmurugan, M.Kruthika, and J.Mahesh, Counsels for Appellants/Accused and of Thiru.D.Suresh Additional Public Prosecutor Counsel for the respondent/Complainant and upon perusing the Trial Court Judgment and relevant records, Memorandum of grounds of appeal and having stood over for

consideration till this day, the Court delivered the following:

JUDGMENT

This Criminal Appeal has been preferred by the Appellant/accused to set aside the order of conviction and sentence passed by the Learned XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.692/2023, dated 04.08.2023.

2. The case of the complainant in brief as given in the complaint in short as follows:-

The case of the prosecution is that on 27.01.2023 at about 9.30p.m, the defacto complainant Harikrishnan parked his auto bearing No. TN 07 AP 9382 outside his house and next day at about 5.30 am i.e., on 28.1.2022, when he came out from his house, his auto was found missing, Hence, on 28.01.2022, a complaint was lodged by him and a case in crime No.47/2022 was registered by the police for the offences u/s.379 of I.P.C. as against unknown persons. After completion of Investigation in Crime No.47/2022, a final report was filed by the respondent police for the offences u/s.379, 411,471 I.P.C. Hence the complaint.

03. Before the Trial Court, summons was served to the accused. He appeared before the Court through his counsel. Copy of the complaint furnished to the accused. Thereafter, charge framed against the accused invoking under Section 251 Cr.P.C and substance of the same was explained to him for which he pleaded not guilty.

04. On the side of the complainant PW1 to PW7 were examined and Exs.P1 to Ex.P10 were marked and M.O's 1 and 2 were marked.

05. Incriminating evidences against the accused was asked to explain as

contemplated under Section 313(1(b) of Cr.P.C. The accused stated they are false evidence.

06. On the side of the accused, no witnesses and documents were marked.

07. The Trial Court has to elaborate trial, came to the conclusion that the accused 1 and 2 are found guilty u/s.379 IPC and the 3rd accused is found guilty u/s.411 of IPC and they were convicted and sentenced them to undergo 2 years of Rigorous imprisonment and to pay a fine amount for a sum of Rs.5000/- failing which the accused to undergo 3 months simple imprisonment and also the 3rd accused is found guilty u/s. 471 of IPC convicted and sentenced him to undergo one year of Rigorous imprisonment and to pay a fine for a sum of Rs.3000/- failing which the accused to undergo one month simple imprisonment and ordered the sentences to run concurrently. Further the accused 4 and 5 were not found guilty u/s.411 of IPC and they were acquitted u/s.248(1) of Cr.P.C.

08. Aggrieved by the conviction and sentencing of the Trail Court, the unsuccessful appellant has preferred this appeal and has raised several grounds in the Memorandum of appeal. The following grounds are worth for consideration:

1. The Appellant further state that the Order of the Lower Court is illegal, improper and in correct.

2. The Appellant further state that the Order of the Lower Court is contrary to evidence, law and facts and circumstances of the case.

3. The Appellant further state that Lower Court had failed to consider that the date of occurrence took place on 27.01.2022 and the defacto complainant came to

know that some unknown person had committed a theft of his auto bearing no. TN 07 AP 9382 on 28.01.2022. However, FIR in Crime No. 47/2022 was registered for the said occurrence which was after the inordinate delay of 5 days and the prosecution had failed to render plausible explanation for such delay. The Appellant further state that thereby, the genesis of the first information to the respondent police itself is doubtful and a case in Crime No. 47/2022 was registered by the respondent based on the complaint lodged by P.W. 1 is not reliable.

4. The Appellant further state that so far as the Petitioner is concerned, except the inadmissible confession statement of A-1, there is no other material with regard to the allegation that he had received the stolen auto from the accused persons and changed the vehicle number, cease number and engine number. It is further submitted that in the absence of the above material, the Lower Court had grossly erred in convicting the Petitioner for the alleged offences under section 411 and 471 of IPC and the same is liable to be set aside by this Hon'ble Court.

5. The Appellant further state that on perusal of the Judgement of the Lower Court, there is no recovery made to him pursuant to the Confession statement of A-1 and no materials had been collected by the Investigating Officer (P.W.7) to substantiate the allegation averred by the A-1 in his confession statement. It is further submitted that in the absence of any such material, merely on the omnibus allegations i.e., based on the inadmissible confession statement of A-1, he was convicted by the Trial Court which is sustainable in eye of law and the same is liable to be set aside by this Hon'ble Court

6. The Appellant further state that the Lower Court had failed to consider that apart from the confession statement of A-1, the Investigating Officer was not collected any material to substantiate the allegation that he had changed the engine number, chase number and vehicle number of the stolen property from TN 07 AP 9382 to TN 07 CP 6716 Further, the recovered auto bearing no. TN 07 CP 6716 (owned by A-2) and stolen auto bearing no. TN 07 AP 9382 were different and the Prosecution had failed to establish that the recovered auto bearing no. TN 07 CP 6716(which was actually owned by A-2) was the same auto bearing no TN 07 AP 9382 which was stolen from the P.W.1 by the accused persons. It is further submitted that when there is no concrete evidence to establish the same, convicting him under section 411 and 471 of IPC is illegal and the same is liable to be set aside by this Hon'ble Court.

7. The Appellant further state that the Lower Court ought to have consider that there is a contradictory statements deposed by the witnesses with regard to the recovery of stolen property The Appellant further state that on perusal of evidence of P.W.6,in his chief examination, he testified that the auto bearing no. TN 07 CP 6716 was recovered from A-3 in Ennore, whereas on scrutinizing the evidence of P.W.7, he deposed that he recovered the said auto bearing no. TN 07 CP 6716 was recovered from A-1 and A-2 which creates doubt with regard to the recovery itself. It is further submitted that without dering the series of irregularities and discrepancies in the evidence of the Prosecution witness and the Lower Court had wrongly erred in convicting to him which is illegal and non est in the eye i law.

8. The Appellant further state that the Lower Court ought to have considered the fact that since the case of the prosecution is of been proved beyond all reasonable doubts, and if two reasonably probable with regard to the recovery and the allegation and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt and fanciful and remote possibilities must be left out of account to entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be considered. Hence the conviction warranted by the lower Court is liable to be set aside by this Hon'ble Court.

9. The Appellant further state that the Lower Court had failed to consider the defence contentions of the accused persons taken in the Trial and grossly erred in convicting the accused persons which is illegal and non-est in the eye of law.

10. The Appellant further crave leave of this Hon'ble Court to raise additional grounds if necessary at the near future.

9. Point for consideration:-

Whether this Appeal is to be allowed or not?

Answer to Point :-

This appeal has been filed by 3rd accused against the order passed C.C.No.692 of 2023, by the 1earned XVIII Metropolitan Magistrate Saidapet on 4.8.2023. The case of the prosecution is A1 and A2 has thefted the auto of the defacto complainant, on 27/1/2022. The Registration Number of the auto is TN 07AP 9382. On the basis of the complaint given by the defacto complainant, case was registered in Cr.No. 47

of 2022, u/s. 379 I.P.C and Observation Mahazar and Rough Sketch has been prepared from the place of occurrence in the presence of witnesses Sathish and one more witness who has not been examined in this case, while the Investigating officer was in search of the accused on 3.2.2022 at 8:15 a.m in the Kuppam beach road he has arrested the 1st and 2nd accused and examined them in which the 1st accused has gave a confession statement in the presence of witnesses the same was recorded. On the basis of Confession Statement the auto bearing Registration number // which is used for committing the offence has been ceased from Santhosh kumar in mahazar. On the same day, on the basis of the information given by the 2nd accused Santhoshkumar about 11:30 am near Ennore Earneswarar temple the 3 to 5 accused were arrested among the 3, the 3rd accused Janarthanan has voluntarily confessed in the presence of the witnesses Sathishkumar and Dinesh kumar and he has shown the auto which has been kept by him in a place, when the auto was ceased in the presence of Dineshkumar and Santhoshkumar near Thiruvottriyur, Vadakku Mada Veedhi, in the said Auto the engine number and ceases number were destroyed, and engine number was also changed as AEMPGA14858 and same was seized in the mahazar, and along with Auto the accused were brought to police station and they kept in judicial custody. During the examination or in the confession statement ,the 2nd accused Santhoshkumar has stated that the said auto was sold to 4th accused for Rs.13000/-, and there after charge sheet has been filed u/s. 379,411,471 IPC and the 3rd accused was convicted for offence u/s.471 IPC and one year Rigorous imprisonment and Rs.3000/- has been imposed, in default of payment of Rs.3000/-,

he has to undergo one month simple imprisonment is the punishment given to 3rd Accused again the said conviction and fine only this appeal has been filed. For filing the appeal the appellant has raised following grounds :

10. The order of the lower court is illegal, improper and incorrect, the order of the lower court is contrary to the evidence, law, facts and circumstance of the case, the lower court has failed to consider the date of occurrence took place 27/1/2022, but the defacto complaint give complaint to some unknown persons, however FIR was registered in Cr.No. 47of 2022 with the inordinate delay of 5 days no explanation given for such a delay, that itself created a doubt and the case in Cr.No. 47/2022 was registered by the respondent based on complainant lodged by the pw1 was not reliable, the appellant further stated that except the inadmissible confession statement of A1 there is no other material with regard to the allegation. In the absence of any material the lower court has grossly erred in convicting the petitioner for the offence under section 411and 471 IPC in the same is liable to be set aside. The appellant further stated that on perusal of the judgment of the lower court there is no recovery made to him, pursuant to the confession statement of A1, the investigating officer has not collected any substantiate evidence, except the confession statement of the accused, in the absence of the any such material merely on the Omni bus allegation based on the inadmissible confession statement of A1 , he was convicted by the trial court which is sustainable in the eye of law and also liable to be setaside. He further stated that apart from the confession statement of the A1 the investigative officer was not collected any material to substantiate the allegation that the appellant accused

changed the engine number and ceases number and vehicle number of the stolen property from TN 07 AP 9382. Further the auto recovered was owned by A2. Both the autos are different and the prosecution fails to establish that recovered auto bearing number TN 07 CP 6760 was not the same auto bearing TN 07 AP 9382 which has been stolen from the PW1. There is no concrete evidence to establish the same, convicting the accused under section 411 and 471 is illegal and liable to be and hence the order has to be set aside. The PW1 has deposed that he recovered an Auto bearing No. TN 07 CP 6760 was recovered from A1 and A2 which create doubt with regard to the recovery itself. Without considering the serious of irregularities and discrepancies in the evidence the prosecution has wrongly erred in convicting him and the order is non est in the eye of law. Since the prosecution has not proved beyond the all reasonable doubt the existence of the reasonable doubt and fanciful and remote possibilities must be left out of account to entitle an accused person to the benefit of doubt raising from the possibilities of duality of views. The possible view of the accused must be considered. Hence considering the above order passed by convicting the accused by the XVIII Metropolitan Magistrate on 4.8.2023 in C.C No.692/2023 has to be set aside and this appeal has to be allowed.

11. On the basis of the grounds raised by the Appellant the relevant records and the Exhibits and material objects marked in the trial has been looked into. During the trial on the side of the prosecution 1 to 8 witnesses has been examined. Among the witnesses defacto complainant has examined as PW1. The complaint was marked through him and he has stated that when he parked his vehicle in front of his house on

27.1.2022 at 9.30p.m in the morning when he came and saw the Auto is not there. Hence he searched for the same. Thereafter he gave a complaint. On the basis of the complaint he was examined and the police was asked him to examine identify the vehicle that time he saw the five accused. It was informed by the police they have stolen auto and thereafter on petition he received the Auto bearing reg.No.TN079282. One Mr.Sathishkumar and Venkatesan has been examined as PW2 and PW3. They are the person who came to know about the Auto of PW1. They are residing in and around of the house of the PW1. Along with the PW1 they have searched for the auto. After making elaborate search they gave a complaint before the police station. PW4 is one Mr.Dineshkumar he has deposed that on 2.2.2022 at about 7.00p.m the police came and enquired about the auto and also prepared the observation mahazar and rough sketch in the presence of myself and Karthikeyan and also identified observation mahazar and the rough sketch. Observation Mahazar alone marked as Ex.A3. The another one witness Mr.Karthikeyan has identified his signature in the observation mahazar he also deposed about the theft of Auto of PW1. One Mr.Sathish has been examined as PW6 he is the one in whose presence the 1st accused was arrested and his confession statement was recorded. He has deposed that how voluntarily the 1st accused gave a confession statement. On the basis of the confession statement the police took him and the another person to Ennore and arrested him their. Thereafter one Mr.Janarthanan gave confession statement. In the confession statement the Janarthanan has stated that on the basis of his confession he has produced the auto in

which the engine number and ceases number were destroyed and new no. assigned as AEMBJAN1458 was seized from him. The Inspector of Police deposed all things as stated earlier. In this case two autos has been seized by the police through the mahazar. Auto TN 07 CP 6760 is used for committing offence by the 1st and 2nd accused. Auto in mahazar TN 07 AP 9382 seized from the 3rd accused and he has given a confession statement even the accused also accepted the offence committed and he gave a voluntarily confession statement that was recorded in the presence of witnesses Sathishkumar and Dinesh kumar. The witnesses Sathishkumar and Dinesh Kumar has identified the auto in North Mada Street, Thiruvotiyur. While seizing the said vehicle the engine number and ceases number has been changed. The said auto was seized only from the hands of the 3rd accused. The 4th and 5th accused have been released for the reason without knowing the fact that the auto is a stolen property they have purchased the said auto. But whereas this appellant/accused knowing fully well that he has purchased the thefted auto. But whereas the learned counsel appearing for the appellant has stated that Auto Number 6060 is the another number which has been given to the thefted auto but that is not so. This auto has been seized only for the purpose that it has been used for committing the offence. Whereas the auto seized from the 3rd accused alone has been thefted. Though the appellant/accused has stated that no document was filed by the investigating officer to prove that the said auto (the auto in which the engine number and ceases number has been destroyed) is the auto that has been thefted by the accused. But according to the prosecution the engine number and ceases number of the thefted auto was destroyed by the accused and it

was in the custody of the 3rd accused that is the Appellant herein. He know how the auto has been came to A1 and A2 and he has purchase the same auto from A1 and A2. After purchase if the auto is kept without any alteration his bonafides cannot be doubted but he has erased the engine number and the ceases no and put a new number that shows the mind of the accused, the auto which is thefted is different from this auto, this auto used for committing the offence the reason why both autos were seized in separate mahazar and separate form 95 is given. The prosecution relies on the confession statement and the witness who has deposed about the voluntarily confession statement of the accused, it is enough for the prosecution to believe that the accused have committed the offence. If the accused is acquitted that especially the appellant/accused effected that he has not purchase a stolen property and he has not committed any forgery after purchasing the property by destroying the engine number and ceases number he can very well examined himself to be a defence witness and he can call for the records belong to the auto to prove that he has not destroyed the engine number and ceases number of the stolen auto knowing fully well that it was stolen he has not come forward to examine himself as a defence side witness in the trial court and he has not produced any document to show that the said vehicle is not the vehicle which has been thefted. Hence on the basis of the confession statement the evidence deposed by the confession statement witness and the mahazar witness this court has sized the auto which has been theft and also seized the auto which has been used for committing an offence. Hence this is enough to come to the conclusion that the 3rd accused/appellant has purchased the stolen

property knowing well it is stolen and thereafter he has changed the engine number and ceases number, not only engine number and ceases number he is given a new number for the said auto engine number, Hence the ground raised by the appellant/accused there is no contradiction and there is no evidence to prove that the auto was purchased by 3rd accused knowing well the said property has been thefted was not correct mere erasing and assign new engine number itself is clear the appellant/3rd accused knows well about that and the thefted auto was in custody further proved the same and the appellant/3rd accused did not file any RC book to correlate the engine number and the ceases number with other registration number.

The learned counsel appearing for the appellant has produced the citation to consider the appeal in

SUPREME COURT CASES

(2015) 7 Supreme Court cases 178

Tomaso Bruno and another

.. Appellants

Vs

State of Uttar pradesh

..Respondent

The learned counsel appearing for the Appellant/has cited 1997 656 171 and also stated that there would be no need of the trial in the police case relying on the report submitted u/s.173(2) Cr.P.C would be entitled to decide the faith of the person agreed. The evidence DW1 to DW5 is must therefore the left of out our consideration . Initially we may mention that inspite of the opinion expressed by the above superior, charge sheet have been submitted by the Investigating officer against the above three cases.

But the said citation is not squarely applicable to the appallent case hence same is not considered and on the basis of the evidence only the trial court has come to the conclusion and convicted the accused in said order of conviction, This court find nothing to interfere. Hence the same has been confirmed. The appeal is dismissed.

In the result, the Criminal appeal is dismissed. The conviction and sentence imposed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai passed in C.C.No.692/2023, dated 04.08.2023 is hereby confirmed. The Trial Court is directed to take steps to secure the accused and sentence him to suffer the remaining period of sentence.

Directly dictated to the steno-typist, computerised by her and corrected and pronounced by me in the open Court, this the 25th day of July 2025.

III Addl. Sessions Judge,
III Addl. Sessions Court,
Chennai.

Draft/Fair : Judgment

C.A.No.496/2023

Date: 25.07.2025

III Additional City Civil Court,
Chennai