



WEB COPY

Crl.R.C.(MD)No.117 of 2017



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 25.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.117 of 2017

K.Sornam

... Petitioner/Appellant/Accused

vs.

The Inspector of Police,
Avudayar Kovil Police Station,
Pudhukottai District.
Crime No.103 of 2009

...Respondent/Respondent/Complainant

PRAYER : This Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the Judgments delivered by the learned Additional District Sessions Judge, Pudukkottai, in Crl.A.No.16 of 2011, dated 18.01.2017 confirming the Judgment given by the learned Sub-ordinate Judge in Sessions Case No.56 of 2010 dated 22.12.2010 and acquit the petitioner/accused.

For Petitioner : Mr.R.Sevugaraja

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl. side)

ORDER

This Criminal Revision Case is directed against the Judgment passed in Crl.A.No.16 of 2011 by the learned Additional District



Sessions Judge, Pudukkottai, dated 18.01.2017 confirming the order passed in Sessions Case No.56 of 2010 by the learned Subordinate Judge, Pudukkottai, dated 22.12.2010 and thereby, acquitting the petitioner/accused.

2. The case of the prosecution is that on 27.07.2009 at about 10.30 p.m. the owner of the thatched shed went to Pudukkottai by engaging P.W.2 in order to take care of his house and the shed. At that juncture, P.W.2, after seeing the fire in the thatched shed, went to the scene of crime and on seeing that, the petitioner had set fire to the shed. Therefore, the entire shed burned out, due to which, one bullock cart, wooden things and 11 hens were completely burned out. Hence, the complaint.

3. On the side of the prosecution, 7 witnesses were examined as P.W.1 to P.W.7, exhibited 5 documents as Ex.P.1 to Ex.P.5 and produced one Material Object as M.O.1. On the side of the accused, no one was examined and no documents were exhibited.

4. On perusal of the oral and documentary evidence, the trial Court found the petitioner/accused guilty for the offence under Section 436 of



IPC and sentenced him to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 6 months Simple Imprisonment.

5. Aggrieved by the same, the petitioner has preferred an appeal before the learned Additional District Sessions Judge, Pudukkottai in CrI.A.No.16 of 2011 and the Appellate Court also dismissed the appeal on 18.01.2017 and confirmed the conviction and sentence imposed by the trial Court. Aggrieved by the same, the present revision has been filed.

6. The learned counsel for the petitioner would submit that there are contradictions between the prosecution witnesses. Therefore, the prosecution has failed to prove the case beyond any doubt. Even according to P.W.1, who is an eyewitness to the occurrence, deposed that the petitioner and two others had set fire to the thatched shed. However, the respondent has failed to secure any accused persons and it is fatal to the case of the prosecution. There was no such occurrence happened. Since there was a previous enmity between the petitioner and P.W.1, a false complaint had been foisted as against the petitioner. Except P.W.2, no other independent witnesses were examined by the prosecution in



order to prove the case of the prosecution. P.W.2 is none other than P.W.1's employee and therefore, he is an interested witness. Even then, both the Courts below mechanically upheld and confirmed the conviction and sentence imposed against the petitioner.

7. Per contra, the learned Government Advocate (Crl. side) would submit that the eyewitness was examined as P.W.2. The property owned by P.W.1 and he engaged P.W.2 in order to take care of his property along with the thatched shed. The thatched shed was put up by P.W.1 to protect the wooden things, bullock cart and hens. Now, only to put down the fire set up by the petitioner, P.W.1 sustained loss to the tune of Rs.1.5 lakhs. Therefore, both the Courts below rightly and concurrently held that the petitioner is liable to punish for the offence under Section 436 IPC and as such, he does not require interference by this Court and prayed for dismissal of this revision.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. The petitioner is the sole accused in the complaint lodged by P.W.1, who is the owner of the thatched shed. The thatched shed was put



up by P.W.1 for custody of his property such as, bullock cart, wooden things. Eleven hens were living there. After seeing the fire in the thatched shed, P.W.2 came out from his house and on seeing that the petitioner set fire to the shed, he was fleeing away. Though there was no other eyewitnesses, P.W.2 categorically deposed that the petitioner only had set fire on the shed. Though he stated that he had also seen two other persons, he had categorically and cogently deposed that the petitioner only had set fire on the shed owned by P.W.1. It was immediately informed by P.W.2 to P.W.1, who went to Pudhukottai. After visiting the burned shed, P.W.1 lodged the complaint on 28.07.2009. On receipt of the said complaint, the respondent registered the FIR.

10. A perusal of the FIR revealed that there was previous enmity between both the villagers, due to which, there was panchayat held, in which, the petitioner had spoken about the issues. Therefore, there was enmity between them and as such, the petitioner had set fire on the thatched shed owned by P.W.1. There was no delay in lodgment of the complaint. Since on receipt of phone call from P.W.2, P.W.1 immediately came to his native and had seen the burned thatched shed. Immediately on the next day, he went to the Police Station and lodged the complaint. In fact, immediately after fire, P.W.2 informed to fire service. They came



to stop the fire. The fire service man was examined as P.W.5. On receipt of the information about the fire accident, immediately they came to the scene of crime at about 11.15 p.m on 27.07.2009 and poured water to stop the fire. He also deposed that the thatched shed was completely burned out, in which, the bullock cart was also completely burned out and the hen shed was also burned. Therefore, the prosecution categorically proved its case beyond any doubt. Hence, both the Courts below rightly convicted the petitioner for the offence under Section 436 IPC.

11. However, the learned counsel for the petitioner would submit that he is ready and willing to compensate for the loss caused due to the fire. That apart, the petitioner was already incarcerated for more than a month.

12. Considering the above facts and circumstances of the cases, this Court is inclined to modify the sentence alone.

13. Accordingly, the conviction imposed on the petitioner for the offence under Section 436 IPC in CrI.A.No.16 of 2011 by the learned Additional District Sessions Judge, Pudukkottai dated 18.01.2017 is



hereby confirmed and the sentence is modified to the effect that the petitioner shall pay a sum of Rs.2,00,000/- as compensation to the victim/P.W.1 directly by way of demand draft and produce the acknowledgement/receipt before the respondent on or before **12.06.2023**. If the petitioner fails to pay the compensation, the sentence imposed on the petitioner for the offence under Section 436 IPC by the Courts below will be hereby restored and the respondent is directed to secure the petitioner to serve the remaining period of sentence as imposed by the Courts below.

14. With the above directions, this Criminal Revision Case is partly allowed.

25.04.2023

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NCC : Yes/No

Index: Yes/No

Internet: Yes/No

To

1.The Additional District Sessions Judge, Pudukkottai.

2.The Sub-ordinate Judge, Pudukkottai.

3.The Inspector of Police,
Avudayar Kovil Police Station,
Pudhukottai District.



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G.K.ILANTHIRAIYAN , J.

sjj

4.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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