

BAIL SLIP

The Revision Petitioner viz., Mr.Chandrasekaran, S/o.Moses Daniel, aged about 40 years was released on bail as per order dated 6.2.2009 in M.P.No.1 of 2009 in Crl.R.C.No.134/2009 and in M.P.No.1 of 2009 in Crl.R.C.No.135/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos.134 and 135 of 2009

Chandrasekaran .. Petitioner in both
the cases

vs

State rep.by Station House
Officer, TR Pattinam PS
Karaikal, Puducherry

.. Respondent in
Crl.R.C.No.134/2009

State rep.by Station House
Officer, Town Police Station
Karaikal, Puducherry.

.. Respondent in
Crl.R.C.No.135/2009

Criminal Revision cases filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 23.01.2009 passed by the learned Additional Sessions Judge, Puducherry at Karaikal in Crl.A.Nos.2 and 3 of 2008 confirming the conviction and sentence imposed by the learned Judicial Magistrate, Karaikal-II dated 24.01.2008 in C.C.Nos.226 of 2006 and C.C.No.9 of 2007 respectively.

For Petitioner : No appearance
in both Crl.R.Cs.
For Respondent : Mr.M.R.Thangavelu
in both Crl.R.Cs. Public Prosecutor (Puducherry)

COMMON ORDER

These revisions have been filed in the year 2009 and the revision petitioner is not appearing before this Court for the past six years, even though several opportunities have been given to him. Even in the year 2012, when I was posted with this portfolio, I had ordered fresh notice to be served on the petitioner for his appearance. Though he has received the said notice, till date he has not appeared either in person or through the counsel. The learned Counsel on record would submit that he has already handed over the papers to the petitioner and therefore, he is not representing him and seeks adjournment of the matter. Since that cannot be a reason for seeking adjournment, the matter was directed to be listed today under the caption "for dismissal". Even today, there is no representation for the petitioner. Hence, the Criminal Revision Case is taken up for disposal on merits as per the judgment of the Hon'ble Supreme Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka]

after hearing the learned Public Prosecutor appearing for the respondent.

2. The petitioner is arrayed as A3 in C.C.Nos.226 of 2007 and 9 of 2007 respectively, on the file of the learned Judicial Magistrate No.II, Karaikal and he has been convicted along with A1 and A2 for the offence under Section 379 r/w 34 IPC Coimbatore and sentenced to undergo simple imprisonment for a period of fifteen months, separately in both the cases; however both the sentences were ordered to run concurrently. As against the conviction and sentence imposed, the petitioner/A3 alone filed CrI. Appeal Nos.2 and 3 of 2008 before the learned Additional Sessions Judge, Puducherry at Karaikal and the first appellate Court by judgment dated 21.01.2009 confirmed the conviction and sentence imposed by the trial court in both the cases. Aggrieved by the same, these two Criminal Revision Cases have been filed.

2. The case of the prosecution in brief is as follows:

Based on the complaint given by the defacto complainant/PW1 in both the cases, two separate cases were registered as against the accused persons for the alleged offence under Section 379 IPC for the theft of National Permit Lorries bearing Registration Nos.TN-28/3987 and KA-21/6888. It is the case of the prosecution that the accused persons involved in many such cases of theft of lorries, in and around Pondicherry. During the course of investigation, A1 and A2 were arrested and based on the confession statement given by A2, the trial court convicted all the three accused under Section 379 r/w 34 IPC including the petitioner herein. The appeals preferred as against the said conviction were also dismissed. Hence, the revisions.

3. The only ground raised by the petitioner/A3 before this Court in the grounds of revision is that when the petitioner/A3 was acquitted of all the charges in respect of CC No.162 of 2007 by the learned Judicial Magistrate No.II, Puducherry, both the courts below failed to take into consideration the said fact and erroneously convicted the petitioner in both the cases. He would further contend in the grounds that both the courts below have failed to take into account the contradictions in the evidence given by P.Ws.1 to 8. It is further stated that PW5 is an interested witness as he is the only main attesting witness to the alleged confession given by the other accused persons. Accordingly, he would pray for setting aside the conviction and sentence ordered by both the courts below.

4. Learned Public Prosecutor (Puducherry) appearing on behalf of the respondent would submit that both the Courts below after analysing the entire oral and documentary evidence convicted the accused. Further he would submit that in respect of the case in C.C.No.162 of 2007, there was no direct evidence and there was also no other independent witness examined. Accordingly, the Court acquitted the accused and that cannot be a ground for acquitting the petitioner in respect of these two cases, where there is a clear confession given by the co-accused and the stolen vehicles were also seized based on the said confession. Accordingly, he would pray for the dismissal of both the revision cases.

5. Heard the learned Public Prosecutor (Puducherry) appearing on behalf of the respondent and perused the materials available on record.

6. On a perusal of the judgments passed by the Courts below, it is seen that both the Courts below, convicted the petitioner along with two others only after taking into account the fact that all the accused persons have joined together and committed theft of many number of lorries and in this particular case, more than three vehicles also have been seized by them during investigation. Therefore, the contention raised by the petitioner that he was acquitted in respect of C.C.No.162 of 2007 cannot be a ground for acquitting him from these cases also. In that particular case, as was pointed out by the learned Public Prosecutor (Puducherry), there was no direct evidence; whereas in the case on hand, the accused persons themselves, viz., A1 and A2 have confessed that they along with the petitioner had committed the crime. It is further seen that PW7, the Sub Inspector of Police has deposed that he registered a case based on the complaint given by PW1 and PW8, the Inspector of Police has deposed that he got the message from the Inspector attached to Mudaliarpur Police Station that he has arrested A1 and A2 and they have given confession about the stolen lorries and the lorries were also seized. Further the Court below relying upon the confession given by the co-accused, as per Section 30 of the Indian Evidence Act had convicted the petitioner also as the confession given by the co-accused will bind all the other accused persons. At this juncture, it is relevant to extract Section 30 of the Indian Evidence Act, 1872.

"30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.

- When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession.

¹[Explanation. "Offence", as used in this section, includes the abetment of, or attempt to commit the offence.] "

The Section is very clear that when there is a corroborative evidence proving the offence, it could be accepted and it is also seen that pursuant to the said confession given by the co-accused in this case, recovery of the vehicles have also been made; further no contra evidence has also been produced by the petitioner to disbelieve the offence committed.

7. In view of the aforesaid reasons, I do not find any ground to interfere with the reasoned order passed by both the Courts below. In the result, both these criminal revision cases are dismissed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

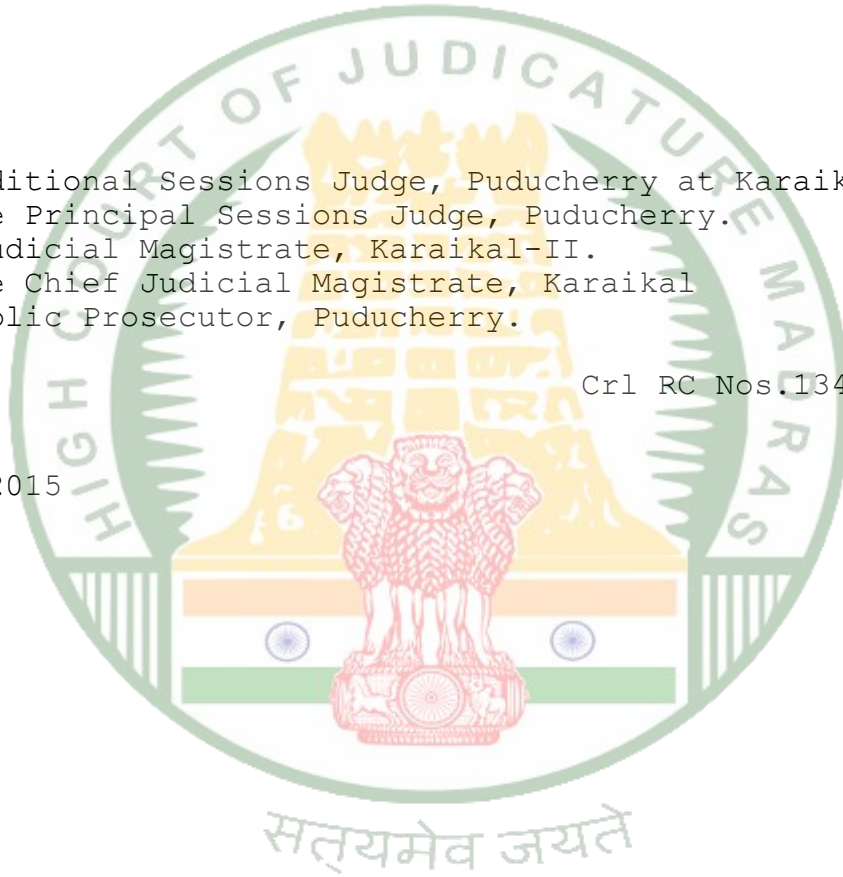
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To

1. The Additional Sessions Judge, Puducherry at Karaikal.
2. Thro The Principal Sessions Judge, Puducherry.
3. The Judicial Magistrate, Karaikal-II.
4. Thro The Chief Judicial Magistrate, Karaikal
5. The Public Prosecutor, Puducherry.

Cr1 RC Nos.134 and 135 of 2009

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pmk.23.9.2015



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