

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.7.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.1170 of 2012

and

M.P.Nos.1 and 2 of 2013

Balamurugan

.. Petitioner/Accused

vs

State rep.by
Inspector of Police
B1, North Beach Police Station
Chennai

.. Respondent/Complainant

Revision Petition filed under Sections 397 read with Sec. 401 of Cr.P.C. to set aside the dismissal order of the discharge petition passed by IV Additional Sessions Judge, Chennai in Crl.MP.No.1063 of 2012 in S.C.No.498 of 2011 dated 02.7.2012 and allow the Criminal Revision Petition.

For Petitioner : Mr.S.Xavier Felix

For respondent : Mr.V.Arul
Government Advocate

ORDER

This revision petition has been filed challenging the dismissal of the discharge petition filed by the petitioner under Section 227 of Cr.PC., in C.M.P.No.1063 of 2012 in C.C.No.498 of 2011 on the file of the learned IV Additional Sessions Judge, Chennai.

2. The case of the prosecution is that one Netaji, who is the conductor of the bus bearing Registration No.TN 01 N 5649 and the bus route is from Thiruvotriyur to Thiruvannamiyur Depot Route No.1, has given complaint stating that on 26.11.201 during the third single trip from Thiruvotriyur to Thiruvannamiyur at Royapuram bus stop the deceased got into the bus and the accused alighted the bus at clive battery bus stop and at about 8.20 p.m., when the bus stopped at Rajaji Salai Beach Station bus stop, there was a wordy quarrel

between the deceased and the accused which leads to death of the deceased. The complainant Netaji and the driver Mohanavel while intervened the wordy quarrel in between the deceased and the accused herein and also tried to passify both of them, the accused kicked the deceased by his legs and beaten by his hands as such the deceased fell down from the bus and sustain head injury and thereafter, they were admitted in the hospital. Hence, case was registered and after investigation, a charge sheet was filed for the offence under Section 302 IPC and the same has been taken on file in S.C.No.498 of 2011. Pending trial, the petitioner herein has filed petition under Section 239 of Cr.P.C., and the same was dismissed. Therefore, the petitioner has come forward with this revision.

3. Today, when the Criminal Revision case is taken up for hearing, after elaborate arguments, the learned counsel for the revision petitioner submitted that in view of the statement made in the evidence, the petitioner cannot be charged for the offence under Section 302 IPC. There are many contradictions in the materials placed with regard to the persons as well as the place of occurrence. Further, Section 216 confers jurisdiction of Court to alter or amend the charges. In support of his contention, the learned counsel relied on the judgment of the Hon'ble Supreme Court in CBI vs. KARIMULLAH OSAN KHAN (2014 - 1 - L.W.(CRL.) 670) and also the judgments of this Court in PRASANNA @PRASANNA VENKATESH vs. STATE REP.BY STATION HOUSE OFFICER (CDJ 2015 MHC 4314) and K.SURESH KUMAR vs. STATE REP.BY DEPUTY SUPERINTENDENT OF POLICE, CRIME BRANCH, CID, SALEM [(2014) 3 MLJ (Crl)310. According to the learned counsel, since the Court below has not considered the above fact before dismissing the discharge petition, the petitioner may be given one more opportunity to argue this point before the Court below.

4. The learned Government Advocate submitted that since the petitioner has not raised this point during the course of argument, the same was not considered by the Court below and the petitioner can very well approach the Court below to put forth his case.

5. Heard the learned counsel for the petitioner and the learned Government Advocate and perused the records.

6. It is the contention of the petitioner that the involvement of the petitioner for the offence under Section 302 IPC is not properly made out by the prosecution. It is also the contention of the petitioner that there is a contradiction in respect of his availability in the bus. Therefore, according to the revision petitioner, the Court below ought to have altered the offence under Section 304 (2) instead of 302 IPC.

7. Admittedly, this point was not argued before the Court below. In view of the above point raised by the petitioner now, I am of the view that the matter has to be remitted back to the authority for fresh consideration. Accordingly, without expressing any opinion

with regard to the merit of the case, the order dated 02.7.2012 made in C.M.P.No.1063 of 2012 in S.C.No.498 of 2001 is set aside and the matter is remitted back to the Court below for fresh consideration. The petitioner is at liberty to raise the above aspect before the Court below and the Court below, after affording opportunity to the petitioner, shall pass appropriate orders on merits independently, within a period of three months from the date of receipt of a copy of this order. It is also made clear that this Court is not expressing any opinion with regard to the case.

8. The Criminal Revision Case is disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar(CSIII)

/true copy/

Sub Asst. Registrar

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To

1. The IV Additional Sessions Judge, Chennai

2. -do-The Principal Sessions Judge, Chennai

3. The Public Prosecutor, Madras

+1 cc to Mr.S.Xavier Felix, Advocate sr.36585

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