

BAIL SLIP

The Petitioner/Accused namely Nallu @ Nallasamy, S/o.Nachappan, was directed to be released was directed to be released on bail as per the order of this court dated 24.11.2008 in Crl.M.P.No.1 of 2008, in Crl.R.C.No.1505 of 2008, on the file of this court,

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-06-2015

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1505 of 2008

Nallu @ Nallasamy ... Petitioner

Versus

The State represented by
Sub-Inspector of Police
Perambalur Police Station
(Crime No.85 of 2000)

.. Respondents

Petition filed under Section 397 and 401 of Criminal Procedure Code to set aside the judgment dated 28.04.2006 passed in Criminal Appeal No. 19 of 2005 on the file of the Sessions Judge, Perambalur confirming the judgment dated 29.06.2005 made in C.C. No. 87 of 2001 on the file of the Judicial Magistrate, Perambalur

For Petitioner : Mr. V. Vijaya Kumar

For Respondents : Mr. V. Arul

Government Advocate (Crl.side)

ORDER

The petitioner is arrayed as first accused in C.C. No. 87 of 2001 on the file of the learned Judicial Magistrate, Perambalur which ended in convicting the petitioner along with the other accused. After trial, the trial Court convicted the petitioner and the other accused for the offence under Section 457 and 380 of IPC and sentenced them to undergo rigorous imprisonment for a period of six months and also to pay a fine of Rs.250/- for each count. Such conviction and sentence awarded by the trial court was also confirmed by the appellate Court, which resulted in the present revision at the instance of the petitioner/first accused.

2. The case of the prosecution is that between 23rd and 26th February 2000, in Somanpudur Village, Perambalur District, some unknown persons have committed theft of valuable articles worth about Rs.13,500/- in the house of one Ganesan by opening the roof tiles. In this context, the respondent police registered a case in Crime No. 85 of 2000. During the course of such investigation, finger prints were lifted from the

scene of occurrence. After two months from the date of occurrence, the investigation officer arrested both the accused and recovered 13 items of gold articles from them. During the course of trial, the investigation officer examined himself as PW6 and deposed that the single digit finger print taken at the scene of occurrence matched with the finger print of the first accused. On the basis of this piece of evidence adduced by PW6, both the trial court as well as the appellate Court convicted the petitioner.

3. The learned counsel for the petitioner did not argue the case on merits but confined his argument for reduction of sentence imposed on the revision petitioner. The learned counsel for the petitioner would contend that the petitioner had undergone incarceration for a period of 18 days between 10.12.2000 and 18.12.2000 and again from 20.11.2008 to 28.11.2008. The entire gold items were recovered from the petitioner soon after the occurrence and they were handed over to the defacto complainant. The petitioner has no other criminal antecedent against him and he is leading a honest life and exhibiting good behaviour. Above all, it is brought to the notice of this Court by the learned counsel for the petitioner that the second accused in this case has filed a separate Criminal Revision Case before this Court in CrI.R.C. No. 1117 of 2008 and this Court, by an order dated 16.04.2010, while upholding the conviction, extended the benefit of Probation of Offenders Act in his favour. It is further argued that the revision petitioner is presently rearing cattle to eke out his livelihood and also to take care of his aged parents. In such circumstances, the learned counsel for the revision petitioner pleaded for reduction of sentence by setting aside the judgment rendered by the courts below.

4. The learned Government Advocate appearing for the respondent did not dispute the fact that the co-accused in this case has approached this Court by filing CrI.R.C. No. 1317 of 2008 and this Court, by the order dated 16.04.2010 extended the benefit of Probation of Offenders Act in favour of the co-accused.

5. I heard the counsel for both sides. As the counsel for the petitioner did not argue this revision on merits, this Court is not inclined to go into the correctness or otherwise of the judgment of conviction rendered by the Courts below.

6. It is an admitted fact that the entire gold jewels recovered from the petitioner have been handed over to the defacto complainant in this case. According to the petitioner, except the criminal case in question, the petitioner did not give room for any other case and he is exhibiting good behaviour and he is repenting his mistake. It is also submitted that already the petitioner was in jail in two spells for a total period of 18 days as against the sentence of six months rendered by the courts below. The learned counsel for the petitioner also brought to the notice of this Court the order passed by this Court in CrI.R.C. No. 1317 of 2008 dated 16.04.2010 whereby this Court extended the benefit of Probation of Offenders Act in favour of the co-accused. The operative portion of the order dated 16.04.2010 reads as follows:-

"26. As rightly contended by the learned Senior counsel when the petitioner is the first offender and is entitled to be dealt with under Section 360 Cr.P.C. the Courts below ought to have considered the same. Admittedly, the courts below have overlooked the provisions contained under Section 360 and 361 of the Code and they have not even recorded the reasons for not applying the provisions contained under Section 360 of Cr.P.C.

27. The learned Government Advocate also agrees that the courts below could have dealt with the provisions under Section 360 of Cr.P.C. Admittedly, the petitioner is the first offender and he has no bad antecedent and this Court finds no reasons to deprive him on the benefit provided under Section 360 of the Code.

28. Therefore, while confirming the conviction of the petitioner, instead of sentencing him, this Court directs that the petitioner shall be released on probation of good conduct and he should enter into a bond for a sum of Rs.10,000/- with one surety for a like sum to appear and receive the sentence when called upon during the period of the year and in the meantime he should keep peace and be of good behaviour. The bond shall be executed before the learned Magistrate, Perambalur, within three weeks from today.

With the above modification in the sentence, the revision is disposed of."

7. Having regard to the submission of the counsel for the petitioner that the petitioner had already undergone 18 days of incarceration and the order passed by this Court in the revision case filed by the co-accused mentioned supra, this Court is of the view that while confirming the conviction rendered by the courts below, the sentence imposed on the petitioner has to be set aside to the period of sentence already undergone by him. Accordingly, the judgment rendered by the courts below convicting the petitioner is upheld and the sentence imposed on the petitioner is set aside to the period of sentence already undergone by him. Accordingly, the Criminal Revision case is partly allowed.

Rsh

-sd/-

Assistant registrar

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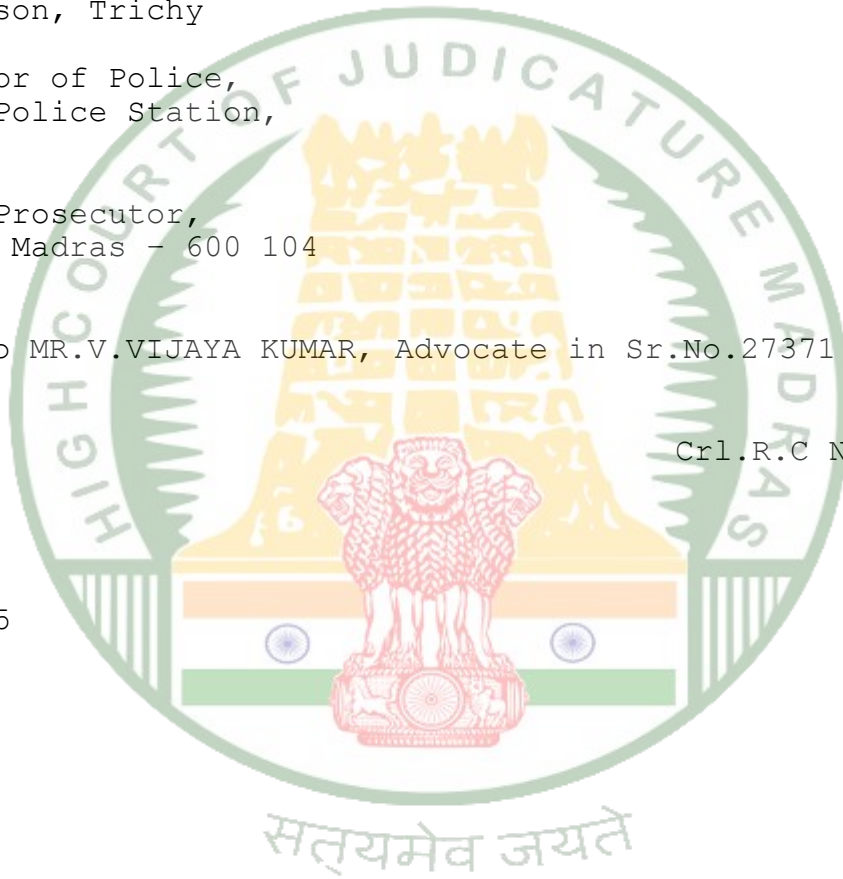
To

1. The Sessions Judge
Perambalur
2. The Judicial Magistrate
Perambalur
3. The Chief Judicial Magistrate,
Perambalur
4. The Superintendent,
Central Prison, Trichy
5. The Inspector of Police,
Perambalur Police Station,
Perambalur
6. The Public Prosecutor,
High Court, Madras - 600 104

+1 C.C. To MR.V.VIJAYA KUMAR, Advocate in Sr.No.27371

Crl.R.C No. 1505 of 2015

BR(CO)
SD : 30/06/2015



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