

BAIL SLIP

CRL.R.C.No.1051/2016

The Petitioners/Accused NOs.3 & 4 namely Boominathan S/o.Palani and Nallasivam S/o.Shanmugasundaram were directed to be released on bail till 20/09/2016 as per the order of this court dated 24/8/2016 and made in Crl.MP.No.8924/16 in Crl.RC.No.1051/16 on the file of this Court.

BAIL SLIP

CRL.RC.No.1053/2016

The Petitioner/Accused(No.1) namely Shantha W/o.Senthil Velayutham was directed to be released on bail till 20.09.2016 as per the order of this court dated 24/08/2016 and made in Crl.MP.No.8928/16 in Crl.RC.NO.1053/16 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.Nos.1051 and 1053 of 2016

1.Boominathan
2.Nallasivam

... Petitioner in
Crl.R.C.No.1051 of 2016/
Accused Nos.3 & 4

Shantha

... Petitioner in
Crl.R.C.No.1053 of 2016/
Accused No.1

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Vs.

State Rep by
The Sub-Inspector of Police,
Central Crime Branch, St.Thomas Mount,
Crime No.102 of 2005.

... Respondent in both Crl.R.Cs./
Complainant

Prayer in Crl.R.C.No.1051 of 2016: Criminal Revision Case filed under Section 397 r/w. 401 of the Code of Criminal Procedure, praying to call for the records relating to the judgment passed by the Hon'ble Principal Sessions Judge, Thiruvallur in C.A.No.35 of 2015 dated 08.08.2016, dismissing the appeal and confirming the order of Hon'ble Judicial Magistrate No.1, Poonamallee, dated 27.03.2015 in C.C.No.233 of 2006 and set aside the same and allow the revision.

Prayer in Crl.R.C.No.1053 of 2016: Criminal Revision Case filed under Section 397 r/w. 401 of the Code of Criminal Procedure, praying to call for the records relating to the judgment passed by the Hon'ble Principal Sessions Judge, Thiruvallur in C.A.No.34 of 2015 dated 08.08.2016, dismissing the appeal and confirming the order of Hon'ble Judicial Magistrate No.1, Poonamallee, dated 27.03.2015 in C.C.No.233 of 2006 and set aside the same and allow the revision.

For Petitioner : Mr.Gopalakrishna Lakshmana Raju
in Crl.R.C.No.1051/16 (Senior Counsel)
for M/s.B.K.Girish Neelakantan
in Crl.R.C.No.1053/16 for Gopalakrishna lakshmana Raju
(Senior Counsel)
For Respondent
in both Crl.R.Cs : Mr.K.Ravichandran
Defacto-complainant
Respondent :M.F.Shabana Government Advocate
(Crl.Side)
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COMMON ORDER

These criminal revision cases are directed against the judgments passed by the learned Principal District and Sessions Judge, Thiruvallur, in C.A.Nos.35 & 34 of 2015, dated 08.08.2016, confirming the conviction and sentence passed by the learned Judicial Magistrate No.1, Poonamallee, in C.C.No.233 of 2006, dated 27.03.2015.

2. In this case, based on the records, the Inspector of Police, Central Crime Branch, after investigation in Crime No.102 of 2005, filed a final report and the learned Judicial Magistrate No.1, Poonamallee, took up the case in C.C.No.233 of 2006 against the accused A1 to A5 and on perusal of the documents and evidence on record, found them guilty and convicted A1 to A5 for the offences punishable under sections 465 r/w 120(B), 468 r/w 471, 420 r/w 34 of IPC and sentenced

each one of them to undergo rigorous imprisonment for one year together with a fine of Rs.1000/-, in default to undergo simple imprisonment for one month for the offence under Section 465 r/w 120(B) I.P.C; to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- carrying a default sentence of simple imprisonment for one month for the offence under Section 468 r/w 471 I.P.C. and rigorous imprisonment for two years and to pay a fine of Rs. 3000/-, in default to undergo simple imprisonment for two months for the offence under Section 420 r/w 34 I.P.C.

3. Aggrieved by the order of conviction and sentence imposed by the Trial Court, A3 and A4 preferred an appeal in C.A.No.35 of 2015 and A1 preferred an appeal in C.A.No.34 of 2015 before the Principal District and Sessions Judge, Tiruvallur.

4. After hearing the arguments of A1, A3 and A4, in the respective Criminal Appeals in C.A.Nos.34 and 35 of 2015, the learned Principal District and Sessions Judge, Tiruvallur, dismissed the appeals confirming the order passed by the Trial court, against which A1 preferred in Crl.R.C.No.1053 of 2016 and A3 and A4 preferred Crl.R.C. No.1051 of 2016 before this Court.

5. The learned counsel appearing for the revision petitioner in both, the Appellate Court, without perusing the materials on the side of the prosecution and without considering the evidence of the prosecution, erroneously confirmed the conviction and sentence imposed by the Trial Court. From a reading of the judgment of the First Appellate Court, it is clear that without passing orders on merits, the First Appellate Court has only mechanically confirmed the conviction and sentence stating that there is no substantial question and dismissed the appeals. Hence, the judgment of the First Appellate Court is liable to be set aside and both the revisions are allowed.

6. The Government Advocate contented that since, the First Appellate Court has given more opportunities to the petitioners/appellants and they were having full knowledge about the hearing of the appeals. However, in spite of that, they have not appeared before the First Appellate Court. According to the learned Government Advocate, there is no illegality or infirmity in the judgment under challenge and both the revisions have to be dismissed.

7. This Court perused the entire materials. Para 11 of the Judgment of the First Appellate Court reads as follows.

On 08.08.2016 also the appellants 1 and 2 are called absent. In spite of so many fair chances were given to the appellants to argue their case in the Criminal Appeal they were absenting themselves wantonly in order to protract the

appeal. In spite of the direction given by the Hon'ble High Court to dispose off the appeal within a period of three months, having full knowledge about the Hon'ble High Court's direction, the appellants wantonly remained absent and made this Court to issue NBW. Thereafter appeared before this Court with warrant recall petition. Even though fair chances were given, the appellants neither appeared before this Court on the date of hearing and argued the matter nor filed written argument. When the NBW issued against the 1st appellant was recalled, the 2nd appellant remained absent and made this court to issue NBW. As there is no arguable and substantial question involved in this Criminal Appeal in favour of the appellant, the appellants are protracting the cases in one way or other and evading to argue the case. The criminal appeal is pending from 21.08.2015 without any progress for the arguments of Appellants.

8. On a careful perusal of the above extract, it is seen that the First Appellate Court has not considered the grounds of appeal raised by the appellants/A1, A3 and A4 and even without considering the documents produced on the side of the prosecution and even without considering the evidence of prosecution and also the grounds raised in the respective appeals, the Trial Court/First Appellate Court held that there is no substantial question involved in the appeals. Hence, this Court is of the considered view that the appeals have been dismissed by passing a mechanical order stating that there is no substantial question, without considering the merits.

9. Since, the appeals have not been considered on merits and the First Appellate Court has dismissed the appeals, without application of mind, the impugned orders are liable to be set aside.

10. The learned counsel for the respective petitioners prayed that the matters may be remanded to the First Appellate Court for fresh disposal on merits and according to law.

11. In view of the above, the Judgment of the First Appellate Court, in C.A.Nos.34 and 35 of 2015, confirming the judgment and conviction sentence passed by the Trial Court is set aside and the matters are remanded back to the First Appellate Court for fresh disposal on merits in accordance with law, after affording an opportunity to both parties.

12. In the result, the Criminal Revision Petitions are allowed. The 1st Appellate Court is directed to dispose the case within a period of eight weeks from the date of receipt of a copy of this order.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate No.1
Poonamallee

2.-do- Thro The Chief Judicial Magistrate
Tiruvallur

3.The Principal Sessions Judge
Thiruvallur

4.The Sub Inspector of Police
Central Crime bench
St.Thomas Mount
Chennai

5. The Public Prosecutor
High Court Madras

+1 cc to Mr.B.K.Girish Neelakantan Advocate
sr 56161

Crl.R.C.Nos.1051 and 1053 of 2016
and
Crl.M.P.No.8925 of 2016

skv(co)
aa04/11/2016

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