

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2016

(Orders Reserved on : 28.09.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.869 of 2016

and

Crl.M.P.Nos.6644 and 6645 of 2016

K.Muniyandi @ Thanga Muniyandi ...Petitioner/Accused/Appellant

Vs.

State represented by
The Inspector of Police,
Modakkurichi police station.
(Crime No.298 of 2006) ...Respondent/Complainant/Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of the Code of Criminal Procedure, to call for the entire records pertaining to the judgment and conviction passed by the Additional District Court-cum-Fast Track Court No.1 at Erode in C.A.No.29 of 2009 vide in judgment dated 04.11.2009 by modifying the judgment and conviction imposed by the learned II Additional Assistant Sessions Judge, Erode, in S.C.No.143 of 2008 vide its judgment dated 04.02.2009 and set aside the same consequently acquit the petitioner.

For Petitioner : Mr.R.Anand

For Respondent : Mrs.M.F.Shabana,
Government Advocate (Crl.Side)

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ORDER

This Criminal Revision Case is directed against the order passed by the Additional District Court-cum-Fast Track Court No.1 at Erode in C.A.No.29 of 2009, dated 04.11.2009 by modifying the judgment and conviction imposed by the learned II Additional Assistant Sessions Judge, Erode, in S.C.No.143 of 2008, dated 04.02.2009.

2. The learned counsel for the petitioner would mainly contend that both the trial Court and the First Appellate Court, have not considered the contentions raised on the side of the revision petitioner and also the evidence adduced on

the side of the revision petitioner and passed erroneous judgments. It is further contended that both the Courts below have erred in convicting the petitioner since admittedly at the time of the alleged occurrence, the petitioner is a minor and has not completed the age of 18 years, in such a case, by applying relevant provisions on Juvenile Justice (Care and Protection) Act 2000, he could not have even been briefly by the learned Sessions Judge instead he should have been forwarded before the Board Constituted under the said Act. It is further contended that without following the above said procedure, both the Courts below have convicted and sentenced the revision petitioner which is against law and justice and hence the judgments of both the Courts below have to be set aside and the criminal revision case has to be allowed and the revision petitioner has to be acquitted. The learned counsel for the petitioner also contended that this is the second revision filed by the petitioner which is clearly and perfectly maintainable under Section 397 of Cr.P.C. and hence, the present criminal revision case has to be allowed.

3. The learned Government Advocate (Crl.Side), would contend that as against the order passed by the Additional District Court-cum-Fast Track Court No.I, Erode in C.A.No.29 of 2009, dated 04.11.2009, confirming the judgment and conviction imposed by the learned II Additional Assistant Sessions Judge, Erode, in S.C.No.143 of 2008, dated 04.02.2009, the revision petitioner has already filed a criminal revision case before this Court in Crl.R.C.No.84 of 2010 and on the request made by the learned counsel for the petitioner, the said criminal revision case No.84 of 2010 was dismissed as withdrawn by this Court on 27.10.2015 and this is the second revision filed by the petitioner and hence the present criminal revision case has to be dismissed as not maintainable. After withdrawing the previous criminal revision case, the petitioner cannot entitle to file another criminal revision case before this Court and hence, the second revision filed by the petitioner has to be dismissed as not maintainable.

4. In this case, admittedly, the revision petitioner viz., Muniyandi @ Thanga Muniyandi is an accused in S.C.No.143 of 2008 on the file of the learned II Additional Assistant Sessions Judge, Erode, and the learned Judge convicted the revision petitioner/accused for the offences under Sections 363, 366, 376 and 493 IPC and sentenced him to undergo two years simple imprisonment for the offence under Section 363 IPC; sentenced him to undergo three years simple imprisonment for the offence under Section 366 IPC; sentenced him to undergo five years rigorous imprisonment for the offence under Section 376 IPC; and sentenced him to undergo three years rigorous imprisonment for the offence under Section 493 IPC and the sentences were ordered to run concurrently. Aggrieved by the order of the learned II Additional Assistant Sessions Judge, Erode, the revision petitioner has preferred an appeal in Crl.a.No.29 of 2009 before the Additional District Court-cum-Fast Track Court No.1 at Erode. The Appellate Court, after hearing the

arguments of both sides, partly allowed the said appeal by setting aside the judgment of conviction passed under Sections 363 and 493 IPC and confirming the judgment of conviction passed under Sections 366 and 376 IPC. As against the said judgment, the revision petitioner has preferred a criminal revision case before this Court in CrI.R.C.No.84 of 2010 and in the said CrI.R.C.No.84 of 2010, this Court passed an order which reads as follows:-

"The learned counsel appearing for the revision petitioner seeks to withdraw this Criminal Revision Case. He has also made an endorsement to that effect. Accordingly, the Criminal Revision Case is dismissed as withdrawn."

On a reading of the above order, it is clear that the criminal revision case preferred by the revision petitioner under Section 397 read with 401 of Cr.P.C. was dismissed as withdrawn by this Court.

5. In this case, it is useful to extract Sections 397 (1) & (3) and 401 of Cr.P.C., which read as follows:-

"397. Calling for records to exercise powers of revision. - (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation. All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 398.

(2)

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the of the of them.

401. High Court's powers of revision. (1) In the case of any proceeding the record of which has been called for by it self or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

6. In this case, the first criminal revision case preferred by the revision petitioner before this Court under Section 397 read with 401 of Cr.P.C. was dismissed as withdrawn by this Court, on the endorsement made by the learned counsel for the revision petitioner. Hence, for the same relief, again, the revision petitioner has filed the present revision which is clearly not maintainable under Section 397 of Cr.P.C. Hence, the argument of the learned counsel for the petitioner that even though it is a second revision, the same is maintainable before this Court is not at all acceptable and is liable to be rejected. Since the second revision is not maintainable, this Court is of the considered view that the present revision case filed by the petitioner is liable to be dismissed on that ground alone.

7. In view of the above, this Court is inclined to dismiss the criminal revision case and hence, the same is dismissed as

not maintainable. The connected miscellaneous petitions are closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Additional District Court-cum-Fast Track Court No.1, Erode.
2. The II Additional Assistant Sessions Judge, Erode.
3. Do thro Principal Sessions Judge, Erode.
4. The Inspector of Police, Modakkurichi police station.
5. The Public Prosecutor, High Court, Madras.

+1cc to Mr.Swarnam, J.Rajagopalan, Advocate SR.No.57287/16

SDR 12.11.2016

Pre-Delivery order in
Crl.R.C.No.869 of 2016

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