

Bail Slip

The Petitioner/Sole Accused namely Thiruvengadam S/o Kuppusamy Naicker was directed to be released on bail as per the order of this court dated 01.03.2011 and made in Cr.M.P. No 1/11 in Crl.R.C.No.252 of 2011 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

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THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.Nos.252 and 293 of 2011 &

Thiruvengadam
S/o.Kuppusamy .. Petitioner in both Revisions/Accused No 2

Vs.

State represented by
Inspector of Police,
CB CID Metro Wing,
Chennai .. Respondent in both Revisions/Complainant

Prayer in Crl.R.C.No.252 & 293 of 2011:

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment of learned Additional District and Sessions Judge, Fast Track Court IV, Chennai, made in C.A.Nos.207 & 206 of 2008 dated 22.02.2010 confirming the conviction and sentence passed by the learned Additional Chief Metropolitan Magistrate, Egmore, in common judgment in C.C.Nos.8717 & 8716 of 2000 respectively, by Judgment dated 07.07.2008 convicting the petitioner under Section 420 r/w.511 IPC and sentenced him to undergo 3 years R.I. and fine 5000/- in default in undergo 3 months SI; under Section 468 IPC sentenced him to undergo 3 years RI and a fine of Rs.5,000/- in default to undergo 3 months SI and under Section 471 r/w.465 IPC sentenced him to undergo 2 years RI.

For Petitioner : Mr.K.Selvarangan
For Respondent : Mr.V.Arul
Addl. Public Prosecutor

O R D E R

These revisions arise against two concurrent judgments of the Courts below convicting the petitioner for offences under Section 420 r/w.511 IPC and sentenced him to undergo 3 months SI; under Section 468 IPC sentenced him to undergo 3 years RI and a fine of Rs.5,000/- in default to undergo 3 months SI and under Section 471 r/w.465 IPC sentenced him to undergo 2 years RI.

2.In disposing the Revisions in CrI.R.C.Nos.229 & 244 of 2010 dated 19.11.2014, releasing the co-accused, this Court observed as follows:

"3.As many as seven complainant cases, two of them being C.C.Nos.8715 and 8717 of 2000 tried by learned Additional Chief Metropolitan Magistrate, Egmore, Chennai. The common accused was one Thiruvengadam. In each of the cases, he and one another had been arrayed as accused. In all the cases, the prosecution case was that A2/Thiruvengdam, who was working as Junior Assistant at Kandasamy Naidu College, aided the first accused/student, who had failed to take up his examination, by forwarding answer sheets to the concerned department as if the same was written by the first accused/student and forged the signature of the Principal of the College.

6.These revisions are to be allowed, on the ground canvassed by learned counsel for petitioners viz., in conducting trial in as many cases of similar nature, the entire evidence, both oral and documentary was recorded only in C.C.No.8712 of 2000. No evidence was recorded in any of the other cases and xerox copies of oral and documentary evidence in C.C.No.8712 of 2000 were juxtaposed as evidence in each of the other cases. It is the contention of learned counsel for petitioners that in doing so, an illegality stands committed. In the face of illegality, there is no need for revision petitioners/accused to show what prejudice has been caused to them and they would be entitled to an acquittal.

7. Learned Public Prosecutor would submit that the error of the trial Court merely would amount to an irregularity which would not vitiate the proceedings. He would support his submissions by referring to Section 465(2) Cr.P.C. Learned Public Prosecutor also placed before this Court a Delhi High Court Judgment

in Shree Lalit Fabrics Private Limited & Others Vs. Linkers Associates Limited & Others [CDJ 1995 DHC 904] in support of his contentions.

8. In decision in Ganesan & another vs. State [2011-1-L.W. (crl) 709], this Court has held that substitution of evidence recorded in another case and consideration thereof is not a mere procedural irregularity. The same would be an illegality offending fair trial guaranteed under Article 21 of the Constitution. The evidence which stands not recorded in the given case is not evidence in the eye of law and therefore, no question of sustaining the conviction based on the evidence recorded in another case, would arise.

Being of the view that the decision of this Court in Ganesan's case (cited supra), informs the correct position in law, these revisions shall stand allowed. As the wrong doing alleged is of the year 1992, it is too late in the day to order re-trial. The judgments of the Courts below are set aside. Petitioners are acquitted of all charges. Fine amount, if any paid, shall be refunded to them."

3. For the very same reasons found in the above extract, these revisions are to be allowed. Accordingly, these revisions are allowed. Judgment of Court below is set aside. Revision Petitioner/accused shall stand acquitted in the case. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CS-II)

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Sub-Assistant Registrar

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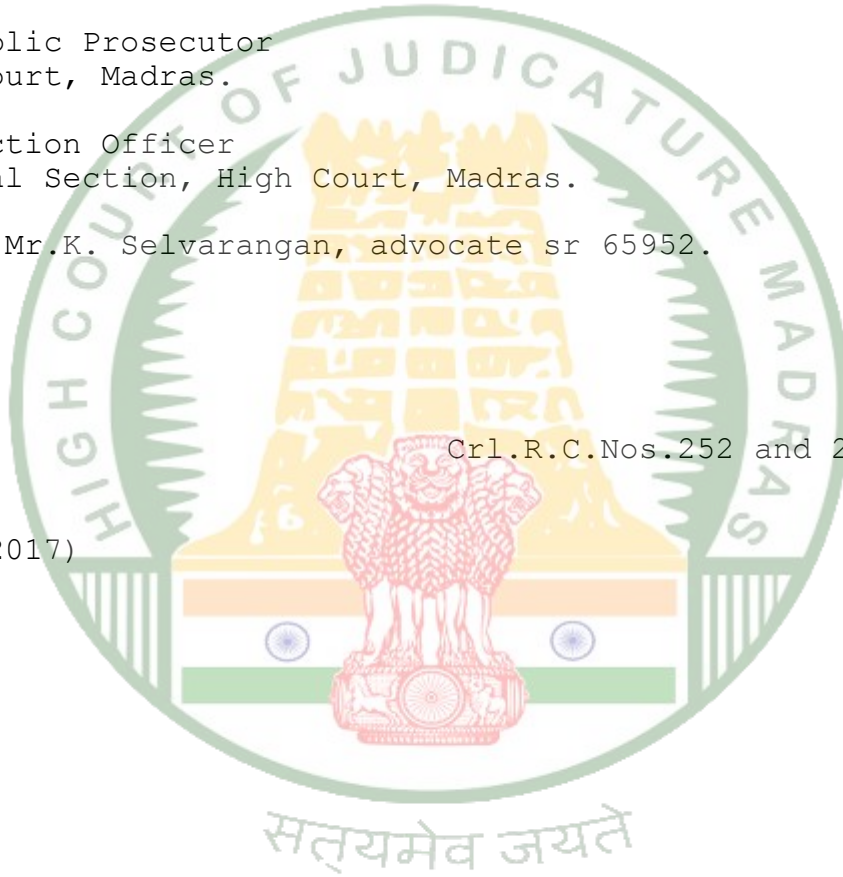
1. The Additional District and Sessions Judge,
Fast Track Court IV,
Chennai.

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2. Do Thro The Principal Sessions Judge
Chennai.
 3. The Additional Chief Metropolitan Magistrate,
Egmore, Chennai.
 4. Do Thro The Chief Metropolitan Magistrate
Egmore, Chennai.
 5. The Inspector of Police
CBCID , Metro Wing, Chennai.
 6. The Public Prosecutor
High court, Madras.
 7. The Section Officer
Criminal Section, High Court, Madras.
- +2 Ccs to Mr.K. Selvarangan, advocate sr 65952.

Cr1.R.C.Nos.252 and 293 of 2011

SKV(CO)
SP(10/11/2017)



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