

BAIL SLIP

The Petitioner/Accused namely Baskar S/o.Thengaiyan and Ayyappan S/o.Thengaiyan were directed to be released on bail as per order dated 29.04.2011 in CRL.MP.1 of 2011 in CRL.RC.699 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

CORAM:

THE HON'BLE Mr.JUSTICE C.T. SELVAM

CRL.R.C.No.699 of 2011

1. Baskar
2. Ayyappan

..Petitioners/A4 & A5

Vs.

State Rep. by
Deputy Superintendent of Police,
Sirkali Police Station,
Nagapattinam District.

..Respondent/Complainant

Criminal Revision Case filed under Section 397 & 401 of the Criminal Procedure Code, praying to call for the records relating to the judgment dated 21.01.2011 made in Crl. Appeal No.53 of 2006 on the file of Sessions Judge, Nagapattinam in confirming the judgment dated 17.04.2006 made in S.C.No.220 of 2005 on the file of the Additional Assistant Sessions Judge, Mayiladuthurai and quash the same.

For Petitioners : M/s.S.Vadivel Murugan

For Respondent : Mr.V.Arul,
Additional Public Prosecutor

O R D E R

This Criminal Revision arises against the judgment dated 21.01.2011 made in Crl. Appeal No.53 of 2006 on the file of the Sessions Judge, Nagapattinam.

2. Revision Petitioners, are accused 4 and 5 in case tried against five accused in S.C.No.220 of 2005 on the file of Additional Assistant Sessions Judge, Mayiladuthurai.

3. Prosecution case is that PW-1/Complainant had lent a sum of Rs.2,500/- to first accused. PW-1 demanded return on 21.01.2004 at about 6.00.p.m. A1 refused and an argument ensued. Villagers intervened and separated them. P.W-4 received a phone call calling for P.W.1 and on being informed, PW-1 proceeded to return the call. On his stepping out of PW-4's house, after doing so, he was attacked by the five accused, they using Aruvals and knives. PW-11, brother of PW-1 proceeded to the scene on hearing the commotion. Both PWs-1 and 11 were abused by their caste name and threatened of being put to death. PW-1 was stabbed in the stomach by A4, while PW-11 was so stabbed by A5. A3 also caused cut injury to PW-11. On the complaint of PW-1, a case was registered. Upon completion of investigation and filing of final report informing commission of offences u/s.147, 148, 341, 294(b), 324, 307 IPC and 3(2)(v) of SC/ST (Prevention of Atrocities) Act, the case was taken on file in P.R.C.No.35 of 2004 on the file of learned Judicial Magistrate-II, Mayiladuthurai. Upon committal, the case was tried in S.C.No.220 of 2005 on the file of Additional Assistant Sessions Judge, Mayiladuthurai.

4. Before trial Court, prosecution examined 14 witnesses and marked 15 exhibits and two Material Objects. None were examined on the side of the defence nor were any exhibits marked. On questioning u/s.313 Cr.P.C., the accused denied charges. On appreciation of materials before it, trial Court under judgment dated 17.04.2006, convicted petitioners for offences u/s.147, 148 and 324 IPC and sentenced them to undergo one week R.I. for offence u/s 147 IPC, 2 weeks R.I for offence u/s.148 IPC and 2 years R.I., and fine of Rs.2,000/- each i/d 3 months R.I. for offence u/s. 324 IPC. Petitioners were acquitted of offences under Sections 341, 294(b), 307 IPC and Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act. All five accused move C.A.No.53 of 2006 on the file of learned Sessions Judge, Nagapattinam, which Court, under judgment dated 21.01.2011, acquitted A1, 4&5 of charge u/s. 147 IPC, convicted A2 and 3 for such offence, convicted A1, 4 & 5 for offences u/s. 148 and 324 but reduced the sentence for offence u/s. 324 to 6 months R.I. Sentences of fine were confirmed and substantial sentences were ordered to run concurrently.

5. Heard learned counsel for petitioners and learned Additional Public Prosecutor for respondent.

6. Learned counsel for petitioners submitted that A1 has not preferred any revision against the finding of the

Appellate Court. The accused 4 and 5 have preferred the present revision.

7. Learned counsel for petitioners submitted that PW-1 had admitted that five members of the prosecution party were present at the time of occurrence. He had admitted that he and his brother PW-11, both had been injured and they had arrived at the scene separately. He has also spoken to not having informed of 5 accused causing stab injury. He had admitted to the altercation between persons of his community and that of the accused taking place in front of a petty shop of one Ramesh and over a period of time. He admitted to all the accused being immediate relatives. PW-4, has not spoken to having witnessed the occurrence. PW-4 who had been examined to speak to having attended a phone call and calling PW-1 informing him that he had been called over phone and of PW-1 being attacked when on the way to PW-4s shop to return the call. PW-11 has admitted to all the prosecution witnesses belonging to his community. Learned counsel for petitioners submitted that in the circumstances, there was possibility of false implication on communal lines and the benefit of doubt is to be accorded to the accused.

8. Heard learned Additional Public Prosecutor on the above submissions.

9. In holding that offences under the SC/ST (Prevention of Atrocities) Act is not attracted, the trial Court has stated as follows:-

"10. Upon hearing both sides and perusing the records, this Court goes to give the following findings. This case is investigated by the Deputy Superintendent of Police, Sirkali for the reason that the accused were charged under Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act. PW-1 during evidence has mentioned that the accused have used the name of the community during assault. In cross examination, PW-1 said that it is more the communal group clash. The motive for the incident according to prosecution is about the return of the loan amount to PW-1. However the community name was dragged by the accused. Witnesses though mentioned the name or the community did not speak about the disparity that existed over the period of time in the village. PW-13 has stated that he has issued the community certificate on the accused and the victim, at the request of the investigation Officer. The evidence go to create a suspicion if the accused and the victims do really belong to the alleged community or for the sake

of adding the section this was done. The community certificates which were marked as Ex.P9 to P13 are without any proper and enquiry. Hence, this Court goes to conclude that the prosecution side has failed to prove the charge under Section 3(2)(V) of SC/ST (Prevention of Atrocities) Act."

10. The Appellate Court, in paragraph 13 of its judgement, has informed as follows:-

"13. It is to be noted that originally, the charges were framed u/s 147, 148, 307 r/w 3(2)(5) of SC/ST (Prevention of Atrocity) Act. The learned trial Judge having framed the charge u/s 3(2)(5) of SC/ST (Prevention of Atrocity) Act ought not have tried the offence himself. He ought to have referred the matter for trial by the Special Court constituted under SC/ST Act. Further, it is to be noted from the materials that the learned trial Judge has framed the charges only on the basis of the investigation officer report. In fact, the charge sheet u/s 3(2)(5) of SC/ST (Prevention of Atrocity) Act ought not have framed by the learned trial Judge to try the offence u/s 3(2)(5) of SC/ST (Prevention of Atrocity) Act. It is well settled that the offence must have been perpetrated against the Schedule Caste only on the ground that they were a Schedule Caste. Only in that situation, the charges could be framed u/s 3(2)(5) of SC/ST (Prevention of Atrocity) Act. On the other hand, the learned trial Judge has swayed away by the investigation officer's report, merely because the injured are happened to be the Schedule Caste members the charges u/s 3(2)(5) of SC/ST (Prevention of Atrocity) Act cannot be framed automatically. However, in this case, the learned trial Judge has framed the charges u/s 3(2)(5) of SC/ST (Prevention of Atrocity) Act and held that the above charges have not been proved and the above section itself is added for some motive. Therefore, this Court holds that though the learned trial Judge had no jurisdiction to try the offence u/s 3(2)(5) of SC/ST (Prevention of Atrocity) Act considering the entire materials, is of the view that the charge u/s 3(2)(5) of SC/ST (Prevention of Atrocity) Act itself would not have arisen in this case, since the material do not show that the offence was committed on the ground that PWs-1 and 11 are Schedule Castes. At any event, the learned trial Judge has held that the charge u/s 3(2)(5) of SC/ST (Prevention of Atrocity) Act was added purposely. Therefore, this Court is of the view that even though the trial Court has committed error in framing charge

u/s 3(2)(5) of SC/ST (Prevention of Atrocity) Act the entire trial with regard to IPC offence cannot be vitiated merely on the ground of charge have been framed by the trial court u/s 3(2)(5) of SC/ST (Prevention of Atrocity) Act. Therefore, this Court holds that being the Additional Assistant Sessions Judge he had power to deal with any other offence under IPC. Accordingly, hold that the findings of the trial Judge with regard to the charges under IPC, does not suffer from any infirmities."

11. We are unable to subscribe to the reasoning of the Appellate Court. Once a charge is framed for offence under the SC/ST (Prevention of Atrocities) Act, the case is to be tried by a Special Court constituted in keeping Section 14 of the Act. Whether prosecution succeeds or not in proving such a charge is a matter for trial. The fact that such charge has not been proved at the trial would not validate a trial of the case by a Court not empowered to do so. Once the mandate of the law is violated the entire trial is vitiated. Even on facts this Court finds that both P.W.1 and P.W.2 have admitted to a group clash and the evidence of PW-4 falsifies the version of PW-1 and PW-11, injured persons, on the manner they arrived at the scene. The genesis of the occurrence is unclear. This is more particularly so, since PW-1 has admitted to not informing police that A5 caused him stab injury and further that the quarrel between both groups was on for about half an hour. The occurrence allegedly took place on 21.01.2004 at about 7.30.p.m. FIR was registered on the next day i.e., 22.01.2004 at about 12.00.noon and the same was forwarded to Court only on 23.01.2004 at about 1.00.p.m. In the circumstances of the case, possibility of the FIR being a product of deliberation cannot be ruled out.

12. This Criminal Revision Case is allowed. The judgment of learned Sessions Judge, Nagapattinam, passed in C.A.No.53 of 2006 on 21.01.2011 confirming the judgment of learned Additional Assistant Sessions Judge, Mayiladuthurai, passed in S.C.No.220 of 2005 on 17.04.2006, shall stand set aside. Petitioners/accused are acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Nagapattinam.
2. The Additional Assistant Sessions Judge,
Mayiladuthurai.
3. The Deputy Superintendent of Police,
Sirkali Police Station, Nagapattinam District.
4. The Superintendent of Central Prison,
Cuddalore.
5. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.S.Vadivel Murugan, Advocate, S.R.No.61829

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KK(CO)
CS/30/01/18



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