

Bail Slip

The Petitioners/Accused Viz, 1.Natarajan S/O.Subramani,2.Mohan S/O.Durai Chettiar be and hereby are directed to be released on bail as per order of this Court dt.21/12/2010 and made in MP.No.1 of 2010 in CrI.R.C.No.1276 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM:

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

CrI.R.C.No.1276 of 2010

1.Natarajan
S/o.Subramani

2.Mohan
S/o.Durai Chettiar

.. Petitioners/Accused 2 & 4

vs.

State represented by
Inspector of Police,
Katpadi Police Station,
Vellore District.
Crime No.237 of 1989

.. Respondent/Complainant

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment of learned Additional District Judge, Fast Track Court II, Ranipet, Vellore District, passed in C.A.No.3 of 2006 on 24.09.2010 modifying the judgment of learned Judicial Magistrate III, Vellore, passed in C.C.No.172 of 1996 on 27.10.2003.

For Petitioners : Mr.S.Haroon-Al-Rashid
for M/S.T.S.Gopalan & Co

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

O R D E R

This revision arises against the judgment of learned Additional District Judge, Fast Track Court II, Ranipet, Vellore District, passed in C.A.No.3 of 2006 on 24.09.2010 modifying the judgment of learned Judicial Magistrate III, Vellore, passed in C.C.No.172 of 1996 on 27.10.2003.

2. Prosecution case is that one Seetharama Rao was the owner of ABC & Company at Ernakulam and a transport contractor for chemicals and fertilizers manufactured and sold by M/s.FACT Limited. He engaged the services of M/s.Bharat Transports, Vellore, towards transport of chemicals and fertilizers from Kerala to Andhra Pradesh. Consignments were brought from Kerala to Vellore. Therefrom they were dispatched through lorries arranged by A1 to various destinations at Andhra Pradesh. Accused 2 to 5 were employees or associates of first accused. During 1998, chemicals and fertilizers worth Rs.6,00,000/- were entrusted to first accused to transmission to Andhra Pradesh. First accused with the active aid of the other accused committed criminal breach of trust and misappropriation of proceeds. First accused obtained the materials from PW-1 under 19 receipts. After properly effecting delivery, first accused was to obtain acknowledgments there regards and have return of all the 19 receipts given by him to PW-1. The receipts issued by first accused had also been signed by accused 2 and 4. While such receipts continued to be held by PW-1, the accused have done away with the materials entrusted to them and secreted the proceeds. A case was registered in Crime No.237/89 on the file of respondent for offences u/s.403, 407, 420 and 120(B) IPC. Upon completion of investigation and filing of charge sheet, the case was tried in C.C.No.172 of 1996 on the file of learned Judicial Magistrate III, Vellore. A3 died pending trial.

3. Before trial Court, prosecution examined 11 witnesses and marked 27 exhibits and 2 material objects. None were examined on behalf of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 27.10.2003, convicted the accused and sentenced them as follows:

Accused	Offence	Sentence
A1	407 IPC	2 years R.I. and fine of Rs.1,000/- i/d 6 months R.I.
	420 r/w 120-B IPC	2 years R.I. and fine of Rs.500/- i/d 6 months R.I.

Accused	Offence	Sentence
A2, A4 and A5	420 and 120-B IPC	2 years R.I. for each offence and fine of Rs.500/- each i/d 6 months R.I.

There against, accused/A1, A2 and A4 moved C.A.No.3 of 2006 and A5 moved C.A.No.2 of 2006 on the file of learned Additional District Judge, Fast Track Court II, Ranipet, Vellore District. Appellate Court, under judgment dated 24.09.2010, acquitted the fifth accused and modified the sentence against accused 1, 2 and 4 as follows:

Accused	Offence	Sentence
A1	407 IPC	2 years R.I. and fine of Rs.1,000/-
	120-B r/w 420 IPC	2 years R.I. and fine of Rs.500/-
A2 and A4	120-B r/w 420 IPC	2 years R.I. and fine of Rs.500/-

There against, petitioners/A2 and A4 have preferred this revision. Pending revision, A4 has died.

4. Heard learned counsel for petitioners and learned Additional Public Prosecutor.

5. A perusal of the entire oral testimony in the case reveals that none of the witnesses have spoken to the involvement of these petitioners. The conviction of petitioners is on the basis of Exs.P2 to P19, receipts, issued by Bharat Trasports, Vellore. Forensic Science report informs the signatures in Exs.P2 to P19 to being that of petitioners. Such report is based on comparative signatures put up in the form of Exs.P22 and P23. Signatures on Exs.P22 and P23 have been obtained by PW-11, investigation officer, on 19.04.1989 and in the course of investigation. Exs.P22 and P23 legally cannot form the basis of comparison towards authentication of signatures found in Exs.P2 to P19 as that of accused 2 and 4. In Mohd.Aman v. State of Rajasthan [1997 SCC (Crl.)777], the Apex Court had considered Section 5 of the Identification of Prisoners Act, 1920, which empowered a Magistrate to order a person to be measured or photographed and stated :

'8.... Even though the specimen finger prints of Mohd. Aman had to be taken on a number of occasions at the behest of the Bureau, they were never taken before or under the order of a Magistrate in accordance with Sec.5 of the Identification of Prisoners Act. It is true that under Sec.4 thereof police is competent to take fingerprints of the accused but to dispel any suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or

under the order of a Magistrate.'
Extending the rationale, this Court in K.Dhanasekaran vs. State [2003 MLJ (Crl.) 217], informed:

'8. It is clear that in the light of the observation made in order to dispel suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence, it is desirable to get the specimen signatures from the accused before or under the order of a Magistrate. Admittedly, in our case, the Inspector has not obtained permission or any order from the Magistrate concerned to get the signature from the accused as well as P.W.1 for sending the same to expert's opinion.'

The Criminal Revision Case shall stand allowed. The judgment of learned Additional District Judge, Fast Track Court II, Ranipet, Vellore District, passed in C.A.No.3 of 2006 on 24.09.2010 shall stand set aside. First petitioner/A2 is acquitted of charges. Fine, if any, paid by him shall be refunded. Bail bonds, if any, executed shall stand cancelled. As second petitioner/A4 died pending revision, the charge against him has abated.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gm
To

1.The Additional District Judge,
Fast Track Court II,
Ranipet,
Vellore District.

2.The Judicial Magistrate III,
Vellore.

3.The Chief Judicial Magistrate,
Vellore

4.The Inspector of Police,
Katpadi Police Station,
Vellore District.

5.The Public Prosecutor,
Erode District.

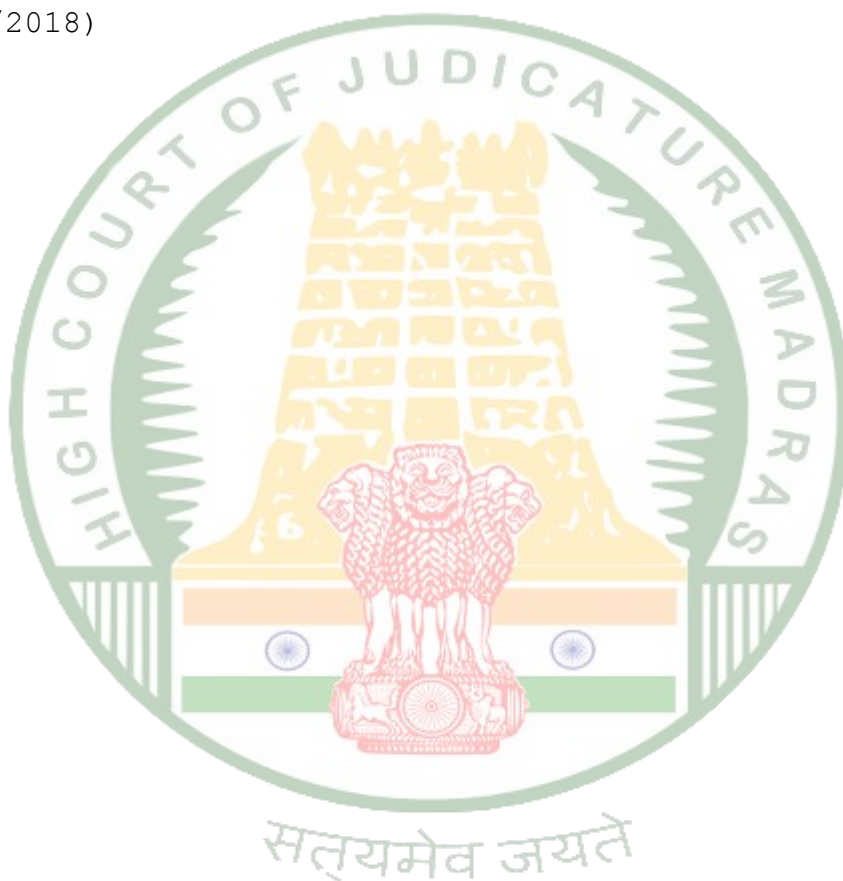
Copy to;

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.T.S.Gopalan & Co, Advocate, S.R.No.48514

CrI.R.C.No.1276 of 2010

PA (CO)
GSP (07/09/2018)



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