BAIL SLIP

That the petitioner/accused namely Basheer Ahmed, S/o, Ali Basha was released on bail as per order of this court dated 13.12.2011 in MP.No.1/11 in CRL R.C.No.1679/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.08.2018
PRONOUNCED ON : 20.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.1679 of 2011

1.Basheer Ahmed
2.Mohamed Hussain ... Petitioners / Appellants / Accused Nos.1 and 2

-vs-

State by Sub-Inspector of Police,
Puduchatram, Namakkal.
(In Crime No.68 of 2009) ... Respondent / Respondent / Complainant

PRAYER: Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., praying to set aside the conviction and sentence passed by the learned Assistant Sessions Judge, Namakkal (Sub-Court, Namakkal) in S.C.No.113 of 2010 dated 29.11.2010 and later confirmed by Principal Sessions Court, Namakkal in C.A.No.110 of 2010 dated 30.08.2011 and acquit them by giving them the benefit of doubt arising out of the case.

For Petitioners: Mr.M.Natraj Vallatharasu

For Respondent : Ms.V.Saratha Devi,
Government Advocate (Crl.Side).

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ORDER

The accused 1 and 2 are the revision petitioners herein. They filed this revision case to set aside the conviction and sentence passed by the learned Assistant Sessions Judge, Namakkal (Sub-Court, Namakkal) in S.C.No.113 of 2010, dated 29.11.2010 and later confirmed by the learned Principal Sessions Judge, Namakkal in C.A.No.110 of 2010, dated 30.08.2011.

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2.The respondent police filed charge sheet against the petitioners herein along with another accused, alleging that the demarcation stone (Muttukal) laid by the Surveyor on 06.02.2009 between S.No.461/5B and S.No.460 odai purambokku, was removed and the odai was leveled by the petitioners on 12.02.2009 at about 10.00 P.M., by using a poclaine machine, thereby causing damages to the State to the tune of Rs.4000/- (Rupees Four Thousand Only). The occurrence site is located adjacent to the panchayat road, running between Thirmalaipatti Village and Karumalai Kovil.

3.These petitioners were tried by the learned Assistant Sessions Judge, Namakkal in S.C.No.113 of 2010 for the alleged offences under Section 434 IPC and Section 3(2) of the TNPPDL Act. The petitioners were found guilty under both the sections and were sentenced to undergo simple imprisonment for six months and imposed fine of Rs.1000/- (Rupees One Thousand Only) each in default to undergo simple imprisonment for three months for the offence under Section 434 IPC and to undergo rigorous imprisonment for one year and imposed fine of Rs.2000/- (Rupees Two Thousand Only) in default to undergo simple imprisonment for three months each for the offence under Section 3(2) of the TNPPDL Act, by the judgment dated 29.11.2010, in S.C.No.113 of 2010, by the learned Assistant Sessions Judge, Namakkal. On appeal, the learned Principal Sessions Judge, Namakkal was dismissed the same, by judgment dated 20.08.2011, confirming the conviction and sentences passed on the petitioners by the trial Court.

4.When the matter was taken up for final disposal, the learned counsel appearing for the revision petitioners herein brought to my knowledge that the charges framed under the petitioners are under Section 434 IPC and Section 3(2) of TNPPDL Act and as per Section 8 of the said Act, the case has to be tried exclusively by the Sessions Judge and not by subordinate Judge namely, Assistant Sessions Judge.

5.In the instant case, the case has been numbered as S.C.No.113 of 2010 and on administrative grounds, the same was made over to the learned Assistant Sessions Judge, Namakkal (Sub-Court, Namakkal) and by judgment dated 29.11.2010, the conviction and sentence has been passed and the same has been confirmed by the learned Principal Sessions Judge, Namakkal in C.A.No.110 of 2010, dated 20.08.2011.

6.This Court in Crl.O.P.Nos.253, 254, 270 and 271 of 2016, dated 11.02.2016, has held as follows:-

> "I am of the opinion that as Section 8 of the TNPPD Act, specifically prohibits the other Courts

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from trying the case relating to TNPPD Act, the Assistant Sessions Court cannot try the case and there can be only one Court of Session in each division sitting at different places. Therefore, by virtue of Section 8 of the TNPPD Act, I am of the considered view that the Sessions Court alone can try the cases relating to TNPPD Act and not the Assistant Sessions Court which is subordinate to the Principal Sessions Court."

7.Accordingly, as the trial has been conducted by the learned Assistant Sessions Judge and in view of the decision cited supra, I have no other option except to set aside the conviction and sentence passed by the learned Assistant Session Judge, Namakkal in S.C.No.113 of 2010, which was confirmed by the learned Principal Sessions Judge, Namakkal in C.A.No.110 of 2010. The matter has been remanded back to the learned Principal District Judge, Namakkal, however, the very same Session Case, viz., S.C.No.113 of 2010 may be retained.

8. It is represented by the learned counsel appearing for the revision petitioners / accused 1 and 2 that as against the another accused, the sessions case was originally split up and the same is now pending before the learned Principal District Judge, Namakkal, in S.C.No.107 of 2017.

9.Therefore, in the interest of justice, both the sessions cases viz., S.C.No.113 of 2010 and S.C.No.107 of 2017 may be tried together by the learned Principal District Judge, Namakkal. The Registry is directed to send back the original records in S.C.No.113 of 2010 to the learned Principal District Judge, Namakkal, within a period of two weeks from the date of receipt of a copy of this order. On such receipt, the learned Principal District Judge, Namakkal, is hereby directed to take up the case on his file and club along with S.C.No.107 of 2017 and dispose of the same, within a period of twelve weeks thereafter. The accused persons are directed to appear before that Court.

10.With these observations, this Criminal Revision Case stands allowed. Accordingly, the conviction and sentence passed by the learned Assistant Session Judge, Namakkal in S.C.No.113 of 2010, which was confirmed by the learned Principal Sessions Judge, Namakkal in C.A.No.110 of 2010 is set aside.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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Myr/JRL

To

1.The Assistant Sessions Judge, Namakkal
(Sub-Court, Namakkal).

2.The Principal Sessions Judge, Namakkal.

3.The Principal District Judge, Namakkal.

4.The Judicial Magistrate No.II, Namakkal.

5.The Superintendent of Police, Namakkal.

6.The Sub-Inspector of Police,
Puduchatram, Namakkal.

7.The Public Prosecutor,
Madras High Court, Madras.

8.The Deputy Registrar,
Criminal Section,
High Court, Madras.

9.The Record Keeper,
Criminal Record,
High Court, Madras.

+1 cc to Mr.M.Nataraj Vallatharasu, Advocate SR.No.80010

Order made in
CRL.R.C.No.1679 of 2011

CSL/20.12.2018

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