

BAIL SLIP

The Petitioner/Accused namely Viji @ Vijayan, S/o.Rajan was directed to released on bail vide order dated 29.11.2011 made in Crl.Mp.No.1 of 2011, in Crl.R.C.No.1395 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.04.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.R.C.No.1395 of 2011

Viji @ Vijayan ... Petitioner

versus

State

Represented by Inspector of Police,
Perundurai Police Station,
Erode District.

... Respondent

Prayer:

Criminal Revision Petition is filed under Section 397 and 401 of the Code of Criminal Procedure, to call for the records relating to the judgment dated 30.05.2011 made in Crl.Appeal No.5 of 2011 on the file of the Court of Additional District Sessions Judge/Fast Track Court No.I, Erode in confirming the judgment dated 17.08.2009 in so far as confirming the conviction of the petitioner under Section 395 of IPC made in S.C.No.157 of 2008 on the file of the Principal Assistant Sessions Judge, Erode and quash the same and allow the above Criminal Revision Petition.

For Petitioner : Mr.S.Vadivelmurugan

For Respondent : Mrs.V.Sarathadevi

Government Advocate [Crl. Side]

O R D E R

The revision petitioner is the fifth accused in S.C.No.157 of 2008 on the file of the learned Principal Assistant Sessions Judge, Erode. The said case has been instituted by the respondent police for the offences punishable under Sections 120-B, 364, 394, 395 r/w 397 and 414 of IPC

against this petitioner and six other accused.

2. At the end of trial, the learned Principal Assistant Sessions Judge, Erode, found the present revision petitioner guilty for the offences punishable under Sections 394, 395 and 120-B of IPC and awarded conviction and sentenced to undergo seven years Rigorous Imprisonment with a fine of Rs.300/-, in default to undergo three months Simple Imprisonment for each offence. As against the said conviction, the petitioner preferred an Appeal [in Crl.A.No.5 of 2011] before the learned Additional District and Sessions Judge [Fast Track Court No.I], Erode [S.C.No.157 of 2008].

3. At the end of proceedings in Crl.A.No.5 of 2011, the learned Additional District and Sessions Judge [Fast Track Court No.I], Erode came to the conclusion that the petitioner was found guilty only for the offence punishable under Section 395 of IPC and confirmed the sentence awarded by the Trial Court.

4. Aggrieved over the judgment passed by the learned Additional District and Sessions Judge [Fast Track Court No.I], Erode, the petitioner has filed the present Criminal Revision Petition before this Court to check the correctness of the said concurrent judgments.

5. At the time of submitting the case of the petitioner, the learned counsel appearing for the petitioner seriously disputed the findings arrived by the learned Additional District and Sessions Judge [Fast Track Court No.I], Erode and made a submission that during the time of Identification Parade, the witness not identified the revision petitioner, they identified the other accused alone, thereby, if really the petitioner is involved in this offence, there may be a chance for identifying the petitioner also. Further added as the evidence given by P.W.8 clearly reveals that the witnesses, who are summoned for identifying the accused are identified the other accused alone and not identified this accused. In the said circumstances, without noting the said aspect, the learned Additional District and Sessions Judge [Fast Track Court No.I], Erode, confirmed the judgment passed by the learned Principal Assistant Sessions Judge, Erode, which is against the principle of law.

6. Now, on going through the submissions made by the learned counsels appearing on either side reveals that it is true that at the time of identifying the accused, the present petitioner was not identified by any one of the witness. However, on going through the entire facts and circumstances, it appears that on the date of the alleged occurrence, the petitioner was with P.W.1 for nearly for 2 days. Moreover, in

the Trial Court, P.W.1, who is the witness in this case has clearly identify the present petitioner and deposed that he was also present at the time of committing the offence. So, identifying the accused in the Identification Parade is not at all necessary to know the involvement of the present petitioner. So, the only submission made by the learned counsel for the petitioner does not have any merits. Accordingly, the above submission made by the learned counsel is not a ground for allowing the revision.

7. Now, at the end of the arguments, the learned counsel appearing for the petitioner prayed this Court to show some leniency against this present petitioner. On going through the entire records placed before this Court would show that the petitioner is not having any previous cases. So, the present petitioner must be treated as a first offender. And also, on going through the order passed by this Court in M.P.No.1 of 2011 in CrI.R.C.No.1395 of 2011 dated 29.11.2011, it seems that the present petitioner has already been in custody for a period of four years. Subsequent to that, the order of suspension was passed in favour of the present petitioner.

8. In the said circumstances, this Court is inclined to modify the sentence of imprisonment as three years and fine as fixed by the Trial Court. Accordingly, the conviction passed by the Courts below are confirmed and the sentence imposed by the learned Principal Assistant Sessions Judge, Erode, in S.C.No.157 of 2008, is modified to that extend that the petitioner was sentenced to undergo three years Rigorous Imprisonment and a fine as fixed by the Trial Court instead of seven years Rigorous Imprisonment. Further ordered that the above said sentence is set off under Section 428 Cr.P.C. if the petitioner is already undergone.

9. In the result, the Criminal Revision is allowed in part and the conviction imposed on the petitioner for the offence punishable under Section 395 IPC in S.C.No.157 of 2008 is confirmed and the sentence imposed on the petitioner in the above case alone is reduced. Fine amount is also confirmed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sri

To

1.The Additional District Sessions Judge
[Fast Track Court No.I], Erode.

2.The Principal Assistant Sessions Judge,
Erode.

3.The Inspector of Police,
Perundurai Police Station,
Erode District.

4.The Superintendent of Police,
Erode District, Erode.

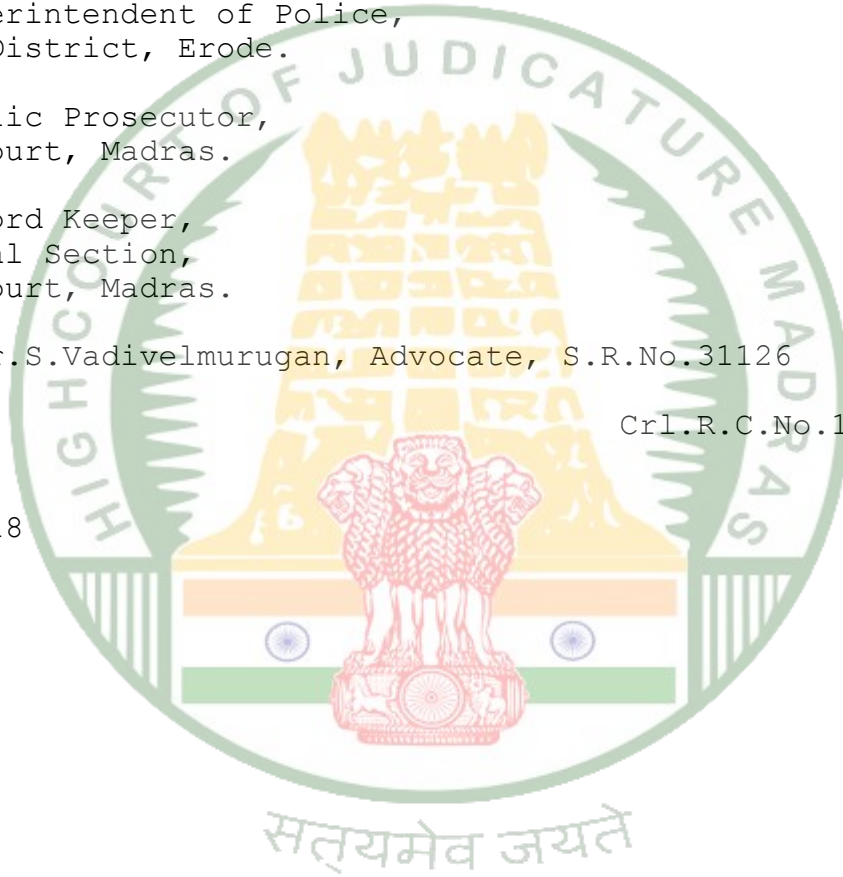
5.The Public Prosecutor,
High Court, Madras.

6.The Record Keeper,
Criminal Section,
High Court, Madras.

+1cc to Mr.S.Vadivelmurugan, Advocate, S.R.No.31126

CrI.R.C.No.1395 of 2011

RSI (CO)
CS/07/06/18



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