

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.20226 of 2010

Kuppuraj

... Petitioner

vs.

1.Dhandapani

2.Murugan

3.State,

rep. by the Station House Officer,
Kalapet P.S., Puducherry.

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order dated 18.12.2007 made in Crl.R.P.No.29 of 2005, on the file of the Court of the III Additional Sessions Judge, Puducherry, confirming the order dated 05.08.2005 made in C.C.No.488 of 2004 on the file of the Court of the Judicial Magistrate-II, Puducherry and consequently, impose maximum punishment on the respondents 1 and 2/accused for the offences committed by them and also direct them to pay compensation to the petitioner and his son for injuries/permanent disability sustained by them.

For Petitioner : Mr.K.P.Jotheeswaran
for Mr.T.P.Manoharan

For Respondents : M/s.M.N.Sumathy (for R1 & R2)

Mr.M.R.Thangavel (for R3)
Government Advocate(Crl.Side),
Pondicherry

JUDGMENT

The petitioner's case is that on 27.05.2004 at about 9.30 a.m. the respondents 1 and 2 / accused due to previous enmity and with common intention joined together and assaulted the petitioner with sticks and hands and thereby causing injury to him, also assaulted his son Sathish on his left hand by causing grievous injury to him. Thereupon, the petitioner filed a

complaint against the respondents 1 and 2 / accused before the 3rd respondent police. Based on the same, the 3rd respondent has registered a case in Crime No.39 of 2004 against the respondents 1 and 2 for the offence under Sections 325, 323. r/w. 34 of IPC and investigated the case. After investigation the 3rd respondent police filed final report on the file of Judicial Magistrate - II, Puducherry and the same was taken cognizance in C.C.No.488 of 2004 and issued summons to the respondents 1 and 2/ accused. Thereafter on appearance of the accused and issuance of free copies of documents as contemplated under Sections 207 of Cr.P.C. charges were framed against the accused for the offence under Sections 325, 323 r/w. 34 of IPC.

2.The respondents 1 and 2 / accused initially pleaded not guilty and claimed to be tried. Subsequently, when the matter was posted for the appearance of L.Ws, respondents have pleaded guilty of the offences and hence, the Court of the Judicial Magistrate has convicted them U/s. 325, 323 r/w. 34 of IPC and sentenced them to undergo imprisonment till the rising of Court on each count and also to pay a fine of Rs.500/- each on each count and in default, to undergo Simple Imprisonment for two months each on each count.

3.It is further case of the petitioner that he had sustained injuries and his son Sathish had sustained fracture of bones, resulted in huge medical expenses for treatment. That apart the fracture injury has caused permanent disablement to his son. However, the Learned Trial Judge without considering the grievous nature of the injuries, the permanent disablement caused to his son and the huge expenses incurred imposed disproportionately lesser punishment on the accused.

4.Therefore, against above order made in C.C.No.488 of 2004, the petitioner filed a Crl.R.P.No.29 of 2005 before the Court of the III Additional Sessions Judge, Puducherry, praying to revise the sentences imposed on the respondents 1 and 2 and to direct them to pay compensation for the injuries caused to the petitioner and the grievous injuries and the permanent disability caused to his son.

5.However, the Learned Additional Sessions Judge without considering the grievances of the petitioner and his son and the gravity of the offences by taking a very lenient approach as if the charge are petty offences has dismissed the Crl.R.P. and confirmed the order of the trial Court. Aggrieved by the same, the petitioner is before this Court by invoking the inherent powers of this Court under Section 482 Cr.P.C.

6.I heard Mr.P.Jotheeswaran for Mr.T.P.Manoharan, learned counsel for the petitioner and M/s.M.N.Sumathy, learned counsel for the respondents 1 and 2 and Mr.M.R.Thangavel, learned Government Advocate (Criminal Side), Pondiherri, for the 3rd respondent and perused the records.

7.The Learned Counsel for the petitioner submitted that he and his son Sathish have sustained severe Injuries and infact the petitioner's son faced fracture of bones, which resulted in huge medical expenses for treatment. It also caused permanent disablement to his son. However, both the Courts below without considering the grievous nature of the injuries, the permanent disablement caused to his son and the huge expenses incurred imposed disproportionately lesser punishment on the accused and further there was no compensation awarded for the disablement and expenses towards the treatments.

8.Per Contra, the Respondents 1 and 2 filed counter and the learned counsel for the respondents submitted that the incident on 27.05.2004 was not a pre planned one but has occurred because of the sudden provocation and there was no enmity or vengeance towards the petitioner.

9.The relevant portion of their Counter affidavit is extracted hereunder:

"5. I submit that the incident on 27.05.2004 was not a pre-planned one but has occurred because of the sudden provocation. Being our relative, we have no enmity or vengeance towards the petitioner. I submit that both of us are first offenders and we have no mens rea to commit any offence. It is because we realized our mistake, both myself and the 2nd respondent herein, admitted the offence and pleaded guilty before the Judicial Magistrate. The Learned Magistrate after considering the facts and circumstances passed the impugned order dated 05.08.2007, which was upheld by the order of the Sessions judge dated 18.12.2007."

10.By submitting so, they prayed for dismissal of the Criminal Original Petition contending that the impugned order is well considered one and does not suffer any illegality.

11.Undisputedly the respondents 2 and 3 admitting their guilty both before the Trial Court and has also filed an affidavit before this Court to that effect. Therefore the only question arise before this Court is that as to whether the petitioner is entitled for compensation and the respondents 1 and 2 is liable to be pay the same, despite of their defense that the incident occurred due to sudden provocation and without

mens rea.

12.It is needless to say on perusal of the case records that in the instant case the respondents 1 and 2 are prosecuted for the offence by placing the actual victim, the petitioner alike mere witness. There is no endeavor made by the Learned Judge to redress the plea of compensation.

13.The Learned Judge having found the accused guilty for the offences under Section 325, 323 r/w 343 IPC sentenced the accused to undergo imprisonment till the raising of the Court on each count and to pay a fine Rs.500/- each on each count in default to undergo Simple Imprisonment for 2 months each on each count, which amounted to total fine of Rs.1,000 x 2=Rs 2,000/-, whereas there is no say about the compensation.

14.The Courts below ought to have found that the petitioner's claim is liable to be considered and a reasonable amount of compensation is payable to the complainant by adopting a constructive approach a step forward in a criminal justice system, so as to meet the ends of justice.

15.There can be no doubt that a direction for payment of compensation to the victim can be issued by a Magistrate under Section 357(3), Cr.P.C. A direction can be issued for payment of amounts beyond the maximum fine which a Magistrate can impose under Section 29 of the Cr.P.C. All that can be one is that while fixing the amount of compensation and fine, it is to be done by taking into consideration of the gravity of injury.

16.It is significant to note here that in the case of R.Mohan Vs. A.K.Vijayakumar reported in 2012 (3) CCR 85, this Court while emphasizing the scope and need for award of compensation to victims was pleased to hold as follows:

"Power to award compensation is not ancillary to the sentences. It is in addition thereto intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system."

17.Coming to the case on hand, in view of the fact that the accused/ respondent admitted their guilt in participation of the offence, resultantly is responsible for the grievous injuries of the petitioner and his son. Thereupon they are jointly liable to compensate the victim petitioner and his son. At the same time, though the petitioner prays for a larger relief to revise the sentence imposed by the Learned Trial judge, claiming it to be disproportionately low, this Court is not inclined to touch upon the same. However there is no doubt that the petitioner is entitled for the loss suffered.

18. For the foregoing reasons and in view of the above legal principle on compensation, the impugned order of the learned Sessions Judge is set aside, consequently the order of the Learned Magistrate is modified to the extent that there shall be a direction to the respondents jointly to pay Rs.20,000/- as compensation payable to the petitioner herein within a period of 2 months from the date of receipt of this Order. The accused / respondents 2 and 3 shall deposit the compensation to the credit of C.C.No.488 of 2004 on the file of learned Judicial Magistrate No.II, Puducherry, who is directed to pay the said compensation to the petitioner on filing of appropriate application. If the compensation is not paid within the stipulated time, the respondents shall be called upon to serve a sentence to undergo Simple Imprisonment for a period of two months.

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

vs

To

1.The III Additional Sessions Judge, Puducherry.

2.The Judicial Magistrate No.II, Puducherry.

Crl.O.P No.20226 of 2010

SP(18/01/2018)

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