

BAIL SLIP

CRL.RC.NO.150 OF 2013

The petitioner/Accused namely Mahdalaimuthu, aged 40, S/o Chinnappa was directed to be released on bail vide order dated 11.02.2013 made in MP.Nos. 1 & 2 of 2013 in Crl.RC.No. 150 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.150 of 2013

Mahdalaimuthu

...petitioner/ Accused

Vs.

State by

The Sub Inspector of Police,

Thally Police Station,

Krishnagiri District.

(Crime No.11 of 2010)

... Respondent/Complainant

The Criminal Revision filed under Sections 397 and 401 of Code of Criminal Procedure against his conviction made in judgment in C.A.No.17/2012 on the file of the learned Principal Sessions Judge, Krishnagiri dated 15.09.2012 confirming the conviction made in judgment in C.C.No.21/2010 on the file of the learned Judicial Magistrate, Denkanikottai, dated 14.02.2012.

For Petitioner : Mr.K.Thiruvengadam

For Respondent : Mr.Hari Hara Arun Soma Sankar.G

Govt. Advocate (Crl.Side)

ORDER

This criminal revision has been filed against the order dated 15.09.2012 made in C.A.No.17/2012 by the learned Principal Sessions Judge, Krishnagiri.

2 P.W.1 is defacto complainant. He gave a complaint before the Thally Police Station against the accused and the Sub-Inspector of Police, Thally Police station, after enquiry, has filed a final report against the accused under section 294 (b) and 326 of I.P.C and forwarded the same to the learned District Musif-cum-Judicial Magistrate, Denkanikottai, which was taken on file in C.C.No.21 of 2010.

3 The learned Magistrate, after trial, has convicted the petitioner/accused and sentenced him to pay fine of Rs.500/- for the offence under Section 294 (b), in default, simple imprisonment for a period of two weeks and sentenced to undergo simple imprisonment for a period of four months and directed to pay fine of Rs.1000/-, in default, simple imprisonment for a period of one month, for the offence under Section 325 of I.P.C. by judgment dated 14.02.2012. Aggrieved against which, the accused had preferred an appeal in C.A.No.17 of 2012 before the learned Principal District Sessions Judge, Krishnagiri. The first appellate Court, after giving due opportunities to both the parties, by judgment dated 15.09.2012, has confirmed the conviction and sentence passed by the learned Magistrate.

4 Aggrieved against the said judgment dated 15.09.2012, the accused has preferred the present criminal revision before this Court.

5 The learned counsel for the petitioner would submit that the alleged occurrence took place on 25.11.2009, but P.W.1 gave a complaint only on 11.01.2010, after the lapse of 45 days, which is not acceptable in law. The above delay has not been explained by both P.W.1/defacto complainant and the respondent police. Originally there was a quarrel between P.W.2 and the petitioner/accused, P.W.1 is only intervened and pacified the quarrel and hence he has no role to play in the alleged occurrence. Except P.W.1, no other witness has supported the case of the prosecution and all the witnesses which have been examined are only interested witness and not an independent witnesses. The respondent police has failed to enquire any independent witness. Further the injuries sustained by the defacto complainant is only simple in nature. Both the trial Court and first appellate Court have failed to consider the above aspects and convicted the petitioner/accused, which warrants interference of this Court.

6 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that admittedly there was delay in lodging the complaint, but, mere delay is not a ground to acquit the accused. P.W.1 & P.W.4 has clearly stated about the occurrence and the Doctor P.W.5, who gave treatment to the defacto complainant, has given wound certificate, which reveals that he sustained injuries in the left ear upper lobe measuring 3 x 2 cm missing with fresh bleeding, pain over the left and right hand and pain over head and stomach. The wound certificate given by the Doctor P.W.5 has been marked as Ex.P3, which corroborate the evidence of P.W.1 and P.W.4. Both the Courts below, considering the above facts, have convicted the accused, which does not warrants any interference of this Court.

7 Heard the learned counsel for the petitioner and the

learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials placed before the Court.

8 Admittedly there was delay in lodging the complaint, but, mere delay is not a ground to acquit the accused, as rightly contended by the learned Government Advocate (Crl.Side). Since P.W.1 has hospitalised for a considerable period, the above delay has occurred. P.W.1 & P.W.4 have clearly stated about the occurrence and the Doctor P.W.5, who gave treatment to the defacto complainant has given wound certificate, which corroborate the evidences of P.W.1 and P.W.4. The first appellate Court as a fact finding Court, has re-appreciated entire evidence and found that the petitioner/accused guilty under Section 294(b) and 325 of IPC and confirmed the conviction and sentenced imposed by the trial Court. This Court as a revision Court, cannot sit as appellate Court and re-appreciate entire evidence. If there is any perversity in the order passed by the Court, this Court can interfere with same. In the present case on hand, this Court does not find any illegality or perversity in the order impugned in this revision and the same does not warrants any interference of this Court.

9 In the result, the criminal revision is dismissed by confirming the conviction and sentenced imposed by the Court below. Trial Court is directed to commit the accused in prison to undergo the remaining period of imprisonment, if any.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge,
Krishnagiri.
2. The Judicial Magistrate,
Denkanikottai.
3. The Chief Judicial Magistrate,
Krishnagiri.

4. The Sub Inspector of Police,
Thally Police Station,
Krishnagiri.

5.The Public Prosecutor,
High Court of Madras.

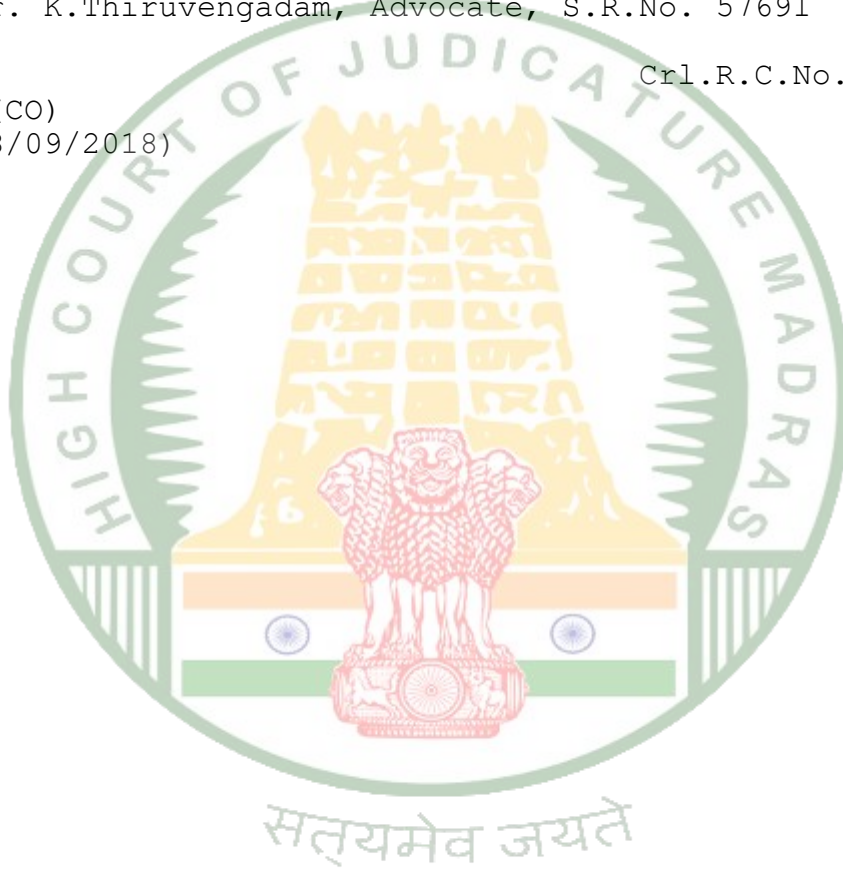
Copy to

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

+1cc to Mr. K.Thiruvengadam, Advocate, S.R.No. 57691

Cr1.R.C.No.150 of 2013

GJII(CO)
GN(18/09/2018)



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