

Bail Slip

The Accused/Appellants viz 1 and 2 1)Rajendran s/o Thimmarayan and 2)Raja s/o chennaiayachetty Accused in STC NO. 248/2011 DT.08/03/2012 on the file of the Judicial Magistrate no.I ,Krishnagiri. Were directed to be released on bail as per order dt 25/04/2013 in MP.NO.1/13 crl.R.C.No.550/2013 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.R.C.No.550 of 2013

1. Rajendran
2. Raja

...Petitioners

Vs.

State rep. By
The Sub Inspector of Police,
Bargur Police Station.
(Cr.No.197 of 2011)

...Respondents

This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the conviction and sentence passed by the learned Principal Sessions Judge, Krishnagiri in C.A.No.25 of 2012 dated 18.09.2012 modifying the conviction and sentence passed by the learned Judicial Magistrate I, Krishnagiri in S.T.C.No.248 of 2011 dated 08.03.2012.

For Petitioner : Mr.s.Rajendrakumar
M/s.Norton and Grant

For Respondent: Mr.R.Ravichandran
Government Advocate (Crl.Side)

O R D E R

Case of the prosecution is that on 12.04.2011 the Tahsildar of Bargur constituency, as a flying squad, based on the secret information received by him in connection with violation of election code, conducted ride. At that time, petitioners/accused were having money with an intention to disburse the same to the voters and on seeing him, the accused had thrown out the money kept by them and ran away from the place. Hence the Sub-Inspector of Police, Bargur Police Station has registered a case in Crime No.197

of 2011 against the accused for the offence under Section 171 (E) of IPC. After detailed investigation, has filed a final report before the learned Judicial Magistrate I, Krishnagiri, which was taken on file in S.T.C.No.248 of 2011.

2 Before the trial Court, in order to prove the case of the prosecution P.W.1 to P.W.7 was examined and Ex.P1 to Ex.P6 were marked and Material Object i.e. money recovered from the place of occurrence, was produced. On the side of the accused none of the witness was examined and no document was marked. The trial Court, after completing trial, has found the accused guilty of offence punishable under Section 171(E) of IPC and convicted and sentenced them to undergo six months simple imprisonment and fine of Rs.2000/- each, in default, simple imprisonment for further period of one week, by judgment dated 08.03.2012.

3 Aggrieved against the said judgment of conviction dated 08.03.2012, the accused had preferred an appeal in C.A.No.25 of 2012 before the learned Principal District Sessions Judge, Krishnagiri. The lower appellate Court, being a fact finding Court, re-appreciated entire evidence and after hearing both sides had allowed the appeal in part by modifying the sentence imposed by the learned Magistrate from six months to three months and confirmed the conviction passed thereon, by judgment dated 18.09.2012, against which present criminal revision has been preferred by the accused.

4 The learned counsel for the petitioners/accused would submit that the allegation against the accused is that the Tahsildar of Bargur constituency, as a flying squad, conducted ride, where the election for Bargur constituency had been conducted, at that time, on seeing him, the accused thrown out the money and ran away from the place of occurrence. The prosecution has not proved the disbursement of money to the voters. None of the voters, who were in the place of occurrence on the day, was not examined. All the witnesses examined by the prosecution are interested witnesses no independent witness was examined. Even FIR, Charge Sheet and 161 statement of witnesses are all reveal that disbursement of money to the voters is not proved. P.W.1 had not stated anything about disbursement of money to the voters. In evidence of P.W.2, who is one of the team members of flying squad, it was not stated about disbursement of money. Only at the time of examination before the Magistrate, the case was improved by stating that the accused disbursed money to voters, but, none of the voters was examined to prove the above said statement.

In the absence of any proof for disbursement of money to voters, Section 171 (E) will not attract. Hence both the Courts below had erroneously convicted the petitioners, and is liable to be set aside.

5 The learned Government Advocate (Criminal Side) appearing for the respondent police would submit that the accused, on seeing the Tahsildar P.W.1, had thrown out the money, which had been kept by them and ran away from the scene of occurrence, which clearly shows that it must be kept with an intention to disburse the same to the voters, which is an offence under Section 171 (E). Hence the prosecution has rightly charged the accused for the offence under Section 171(E) and the Courts below had rightly convicted the accused, which does not warrants any interference of this Court.

6 Heard the learned counsel appearing for the petitioner/accused and the learned Government Advocate (Crl.Side) appearing for the respondent/police and perused the materials available on record.

7 On perusal of the records, it reveal that no witness was examined to show that the accused had disbursed money to the voters and no recovery was made either from the accused or from the voters. Prosecution has failed to prove its case beyond reasonable doubts. Therefore, both the Courts below had failed to consider these aspects. Even though, in revision this Court need not re-appreciate entire evidence, but, prima face, the complaint, FIR and Charge Sheet are all will not reveal the allegation to attract Section 171 (E). Even, the investigation report filed by the Tahsildar, has no ingredients of Section 171 (E). Some of the witnesses, at the time of examination before the Magistrate, had improved their version, which is contrary to criminal law. Under these circumstances, in the absence of any proof for disbursement of money to the voters, this Court is inclined to allow this revision.

8 Accordingly, the criminal revision is allowed and conviction and sentence passed by the learned Principal Sessions Judge, Krishnagir, made in C.A.No.25 of 2012 dated 18.09.2012, is hereby set aside. Bail bond executed, if any, shall stands cancelled and amount if any deposited by the petitioners shall be refunded to them.

Sd/-

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Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sessions Judge, Krishnagiri.
2. The Judicial Magistrate I, Krishnagiri.
3. Do thro the chief Judicial Magistrate, Krishnagiri.
4. The Sub inspector of Police,
Bargur Police station.

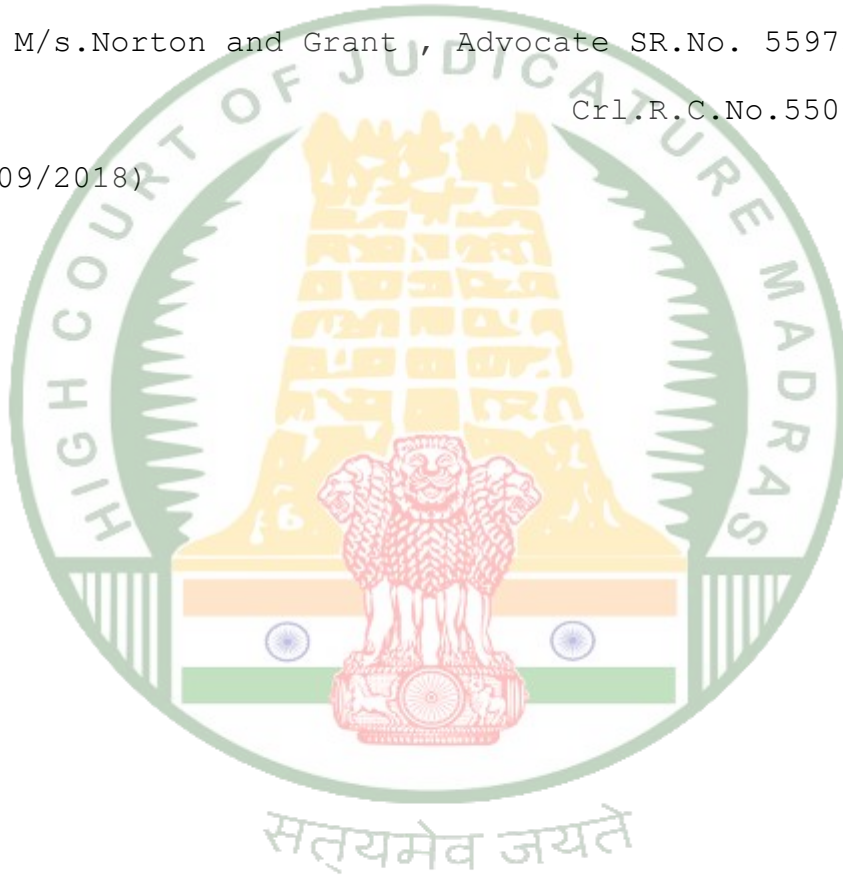
5. The section officer,
Vr section, High court , Madras.

6. The Public Prosecutor, High Court of Madras.

+lcc to M/s. Norton and Grant , Advocate SR.No. 55973

CrI.R.C.No.550 of 2013

ASK(26/09/2018)



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