



Bail Slip

1.Mr.M.Ayilsamy, S/o.Muthusamy aged about 72 years 2. Gnanaselvam S/o.Arockiyam aged about 67 years were released on bail vide order of this Hon'ble High Court dated 23.06.15 in MP(MD).No.1/2015 in CrI RC(MD).No.243 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.04.2018

DELIVERED ON : 29.06.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

CrI. R.C.(MD)No.243 of 2015

1.M.Ayilsamy

2.Gnanaselvam .. Petitioners /Appellants/Accused Nos.1 & 2

Vs.

1. P.Arulappan

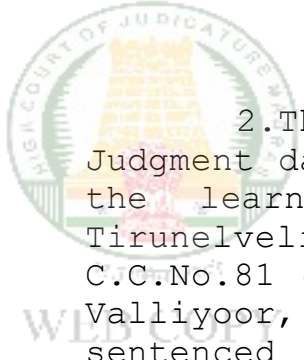
2. State rep. By
The Public Prosecutor,
Tirunelveli. .. Respondents/Respondents/Complainants

Prayer : This revision case is filed under Sections 397(1) r/w. 401 of Cr.P.C., to set aside the Judgment dated 18.04.2015 made in C.A.No.71 of 2011 on the file of the learned III Additional District and Sessions Court, Tirunelveli by confirming the Judgment dated 03.05.2011 made in C.C.No.81 of 2008 on the file of the learned Judicial Magistrate, Valliyoor, Tirunelveli.

For Petitioners	: Mr.S.Palanivelayutham
For Respondent No.1	: Mr.P.A.Solomon
For Respondent No.2	: Mr.K.Suyambulinga Bharathi
	Government Advocate (CrI. Side)

ORDER

Heard Mr.S.Palanivelayutham, learned counsel appearing for the petitioners, Mr.K.Suyambulinga Bharathi, learned Government Advocate (CrI. Side) appearing for the second respondent and Mr.P.A.Solomon, learned counsel appearing for the first respondent.



2. This revision case has been filed to set aside the Judgment dated 18.04.2015 made in C.A.No.71 of 2011 on the file of the learned IIIrd Additional District and Sessions Court, Tirunelveli by confirming the Judgment dated 03.05.2011 made in C.C.No.81 of 2008 on the file of the learned Judicial Magistrate, Valliyoor, Tirunelveli. The petitioners were convicted and sentenced to undergo two months simple imprisonment and to pay a fine of Rs.1,000/- (Rupees One Thousand only) for offence punishable under Section 500 of IPC in default one week simple imprisonment. The first respondent has made an allegation that he was subjected to humiliation by excommunicating him from his own caste and community and he was prevented from participating the social functions conducted by the petitioners. The first respondent and his family members are protestant Christians, the first petitioner is a Hindu and the second petitioner is a Catholic Christian. The petitioners and first respondent belonged to the same community. The father-in-law of the first respondent filed a civil suit against the individuals and thereby, it is stated that the fame of the community is disreputed. The resolution was passed on 12.11.2001. As against the said resolution, the complainant filed a petition on 07.10.2004. The learned Judicial Magistrate, Valliyoor, Tirunelveli vide Crl.M.P.No.6685 of 2004 dated 17.12.2004 dismissed the petition on the ground of limitation. Against the order, the first respondent preferred criminal revision petition in Crl.R.C.No.89 of 2005 and the same was dismissed on 04.02.2005. Against the order, the first respondent preferred an appeal in Crl.A.No.131 of 2008 and the Apex Court remand back the matter for fresh disposal on 21.01.2008. Thereafter, the complaint was taken on file on 08.01.2018. After elaborately trial, the learned Judicial Magistrate, Valliyoor has found the petitioners guilty and convicted and sentenced them to undergo two months of imprisonment and to pay a fine of Rs.1,000/- (Rupees One Thousand only) in default to undergo one week imprisonment.

3. Against the judgment, the petitioners preferred an appeal before the learned Additional District and Sessions Judge/FTC No.I, Tirunelveli vide C.A.No.71 of 2011. The learned Additional District and Sessions Judge passed an order on 09.11.2011 setting aside the order of conviction and imposed a fine of Rs.9,000/- (Rupees Nine Thousand only). Against this order, the first respondent has preferred appeal in Crl.R.C.No.845 of 2013 and the same was disposed on 02.02.2015 by remanded back to learned Additional District and Sessions Judge/FTC No.I, Tirunelveli vide C.A.No.71 of 2011 for fresh disposal. After hearing argument on both side, the IIIrd Additional District and Sessions Judge, Tirunelveli confirming the order of the trial Court on 18.04.2015.

<https://hcservices.ecourts.gov.in/hcservices/> 4. On the side of the petitioners, it is stated that the first respondent filed a complaint before the learned Judicial Magistrate, Valliyoor and the same was dismissed by the learned



Judicial Magistrate. The first respondent filed a revision and the same was disposed on 02.02.2015 by remanding back to C.A.No.71 of 2011 for fresh disposal. After the argument, the learned Additional District and Sessions Judge, Tirunelveli passed an order on 18.04.2015 confirming the order of the trial Court.

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5.On the side of the petitioners, it is stated that there is an Association for the community and the petitioners and first respondent are family members of the community. It is stated that on 12.11.2001, the resolution was passed in the Association which was signed by the petitioners. On the basis of the resolution signed by the petitioners, the first respondent and his family members were excommunicating and they filed a civil suit against the Association. It is stated that the petitioners are not party in the civil suit and the allegation is that the petitioners signed the resolution. The petitioners denied their signature in the resolution dated 12.11.2001.

6.On the side of the petitioner, it is stated that the first respondent sent lawyer's notice to the Office Bearers of the Association. The petitioners did not reply the notice. The second notice was also sent on 05.07.2003. The petitioner did not response immediately. Only on 29.04.2004, the petitioner sent a reply to the notice. The lower Court has come to a conclusion that the petitioners did not send reply notice as they have signed the resolution. It is further stated that the resolution was only passed by the Association and the respondent not allowed to take decision by the Association. The respondent has not proved that they were defamed by the resolution passed by the Association. The case is of the year 2001 and there cannot be any valid reason for the respondent to state that the offence is continues in nature. The Signature was not proved by the handwriting expert. The true members of the Association are not added as parties only after the expiry of the limitation period, the respondent has filed the complaint. The age of the first petitioner is 76 and age of the second petitioner is 72. Both the parties have not opted for expert opinion. Hence, the trial Court has come to a wrong conclusion that the resolution was signed by the petitioners.

7.On the side of the respondents, it is stated that the first respondent is a retired Professor and the Civil case between the first respondent and the second petitioner is still pending. The petitioner is not a party in order to make the respondents withdraw the civil case, the petitioners indulged in illegal Panchayat and signed defamatory letter and sent the copy of the letter to all other members of the same community. The resolution was signed by the petitioners. The learned Judicial Magistrate has come to the correct conclusion that the signatures in the <https://hcses.hcses.in/hcses/> of the petitioners. Both the parties are not willing for expert opinion, only to compel the first respondent to withdraw the civil case, this resolution was passed. Sending the



letter is a defamatory action.

8. On the side of the first respondent, the learned counsel relied on the judgment passed by the High Court of Rajasthan in the case of **Hafeez Mohd. & Ors. v. Shri Mola Bux** in **S.B.Criminal Misc. Petition No.836 of 2010**, which reads as follow:

"This Court in the case of Shaukat Ali (supra) has clearly held that excommunication from the community amounts to offence under Section 499 IPC, which is punishable under Section 500 IPC."

9. On the side of the first respondent, the learned counsel relied on the order passed by the Hon'ble Supreme Court in the case of **Thiruvengada Pillai v. Navaneethammal & Anr.** In **Writ Petition (Civil) 290 of 2001**, which reads as follows:

"While there is no doubt that Court can compare the disputed handwriting/signature/finger impression with the admitted handwriting/signature/finger impression such comparison by Court without the assistance of any expert, has always been considered to be hazardous and risky."

10. On the side of the first respondent, the learned counsel placed reliance on the Judgment of the Hon'ble Supreme Court in the case of **State of Punjab v. Balwinder Singh and Ors.** in **S.L.P. (Cr1.) No.7872-7873 of 2010**, which reads as follows:

"For lessening the high rate of motor accidents due to careless and callous driving of vehicles, the courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence if the prosecution is able to establish the guilt beyond reasonable doubt."

11. Records perused. It is seen from the records that the first respondent and the second petitioner are Christians and the first petitioner is the Hindu. Though they are following different faith in Christianity, they can not insist upon any caste factor. Hearing this case, the petitioners and the first respondent belonged to an Association formed on the basis of the community. This itself is against Christianity. The first respondent is not added any of other members of the Association as party. The first respondent has not proved that the petitioner have some personal motive against him. The first respondent has not elicited in what way he was defamed and in what way he was humiliated. The first respondent has no prove that he was humiliated by the third party on the basis of this resolution. The



civil litigation is going between the parties. They have approached even the Hon'ble Supreme Court twice and they have approached this Court for three times. There is no chance for an end for this litigations in the near future. From the records, it is seen that so called resolution was passed in the year 2001 but the first respondent has filed private complaint only in the year 2004. Now 17 years passed and all the concerned persons are aged about 70 years old. There is no use in having the case pending for further period.

12. For the above reasons, the judgment passed by the lower Court is set aside and the criminal revision case is allowed. The registry is directed to send this order copy as expeditiously as possible.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Valliyur,
Tirunelveli.

2. Do thro' the Chief Judicial Magistrate,
Tirunelveli.

3. The III Additional District and Sessions Judge,
Tirunelveli.

4. -Do- Thro' the Principal District Judge, Tirunelveli.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.S.Palani Velayutham , Advocate in SR No. 70805
+ 1 cc TO Mr.S.Ayyanar Prem Kumar , Advocate in SR No. 70420

mrn

AE/VR/SAR1/09.07.2018/5P/8C

Cr1. R.C.(MD)No.243 of 2015
29.06.2018