



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
12.09.2018	19.09.2018

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.RC.[MD].No.514 of 2018

and

Crl.M.P(MD)No.7095 of 2018

Serma Maharajan @ Jeyamurugan

: Petitioner

Vs.

State represented by
The Inspector of Police,
Tisayanvilai Police Station,
Tirunelveli District.
(Crime No.17 of 2007)

: Respondent

PRAYER : Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C., to call for the records of the learned Additional District Sessions Judge (Fast Track Court No.I), Tirunelveli in Crl.A.No.151 of 2008 by the judgment dated 09.12.2010, by which partly confirming the finding of the Trial Judgment and sentence imposed by the learned Assistant Sessions Judge, Vallioor in S.C.No.257 of 2007 by the judgment dated 22.09.2008 and set aside the judgments of the courts below, acquit the petitioner.

For Petitioner : Mr.P.T.Ramesh Raja

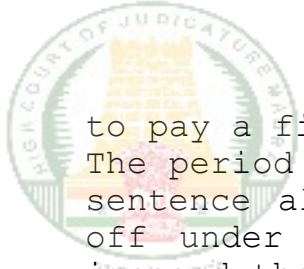
For Respondent : Mr.A.Robinson

Government Advocate (Crl.Side).

ORDER

This Criminal Revision Petition is directed against the concurrent findings of courts below in the criminal case tried against the revision petitioner.

2.The charges framed against the revision petitioner is for an offence under Section 21(4) of the Mines and Minerals (Development and Regulation) Act, 1957 and Section 307 I.P.C. The trial court found him guilty of both the charges and sentenced him to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- for the offence under Section 21(4) of the Mines and Minerals (Development and Regulation) Act and to undergo 3 years Rigorous Imprisonment and



to pay a fine of Rs.1,000/- for the offence under Section 307 I.P.C. The period of sentence was ordered to run concurrently and period of sentence already undergone by the revision petitioner shall be set off under Section 428 Cr.P.C. Further, the trial Court has also imposed the default sentence of six months rigorous imprisonment for each of the offence.

3. On appeal, the lower appellate Court modified the Judgment and instead of conviction under Section 307 I.P.C, found the accused guilty for an offence under Section 353 I.P.C and imposed sentence for a period of two years Rigorous Imprisonment and fine of Rs.1,000/- in default three months Simple Imprisonment. As far as the offence under Section 21(4) of Mines and Minerals (Development and Regulation) Act, the lower appellate Court confirmed the conviction and sentence imposed by the trial court with a direction that the period of sentence shall run concurrently and the period of sentence already undergone shall be set off under Section 428 Cr.P.C.

4. The revision petitioner/accused absconded after the judgment passed by the trial court, on 22.09.2008. Thereafter, he was secured by the respondent police on 27.06.2018 and committed to prison. An application to condone delay of 2716 days in preferring revision petition along with the revision petition was presented before this Court.

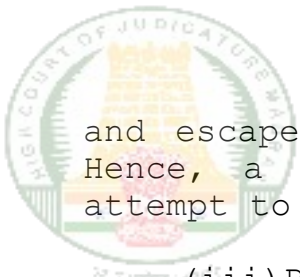
5. This Court after perusing the records and the reasons stated for the delay has observed as below.

"Though the reason for condoning such an enormous delay of 2716 days is not convincing, to afford an opportunity, this Court is of the view that the delay may be condoned." Thus, after condonation of the delay in preferring revision petition, the revision petition was taken up for hearing, after serving notice to the respondent.

6. The brief facts of the case are as follows:

(i) on 06.02.2007, at about 07.00 a.m., near Urumangulam, Anaikarai West of the village, three persons were loading sand illicitly in Tempo bearing Registration No.TN.69-E-6522. On the specific information received over phone at about 06.15 a.m., Mr.Kathiresan, Deputy Tahsildar (P.W.1) informed the same to the Revenue Inspector Bagawathi (P.W.2) and reached the spot at 07.00 a.m.

(ii) On seeing P.W.1, P.W.2 and Mr. Sudalimuthu (P.W.3), Village Assistant, two loadmen ran away from the place of occurrence. The vehicle's driver interrogated by them disclosed that his name is Chermarajan. The Deputy Thasildar instructed him to bring the vehicle to the Taluk Office. Under the guise of taking the vehicle to the Taluk Office, the driver attempted to over run them. Under the fear of being over run, they paved way for the vehicle. Taking advantage of that, the driver fled away turning the vehicle to left



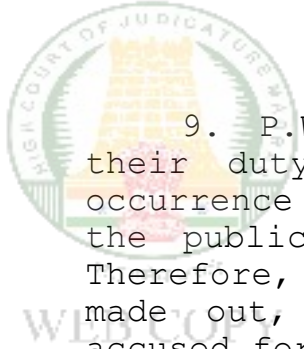
and escaped. They went chasing the vehicle. It did not fructify. Hence, a complaint was given to the respondent police alleging attempt to murder and theft of river sand.

(iii) P.W.1 and P.W.3 has spoken about the said incident and the spot of illicit mining has been visited by the investigation officer (P.W.7) namely Dhanabalan, in the presence of Thangavel (P.W.4), VAO. The observation mahazar along with rough sketch were prepared. Later at about 9.30 am, the accused along with the Tempo loaded with sand, was found near 200 metres away from the telephone exchange, Thisayanvilai, Ettamzhi Road and the same was recovered under mahazar and the accused was arrested. He gave a confession statement admitting the guilt.

(iv) Before the trial court, the complaint is marked as Ex.P.1 and the same is identified by Kathiresan (P.W.1). The observation mahazar (Ex.P.2) is identified by Thangavel (P.W.4), who is one of the witnesses to the preparation of observation mahazar. Recovery mahazar (Ex.P.4) is spoken by Mahalingam (P.W.5). The mini lorry bearing registration No.TN-E-6522 is marked as M.O.1 through P.W.7.

7. The short point canvassed before this Court is that the contradiction between the evidence of P.W.1, P.W.2 and P.W.3, who are supposed to have witnessed the attempt to hit the team by the accused, have not been properly considered by the Courts below. The tools used for illicit mining of the river sand not recovered and produced before the Court. P.W.5, the witness to the recovery of items, such as spade and other tools, in his cross examination admits that the tools used for mining sand were recovered along with the vehicle. But, neither the mahazar nor the Investigation Officer discloses the same. The owner of the vehicle (M.O.1) has not been investigated. In the absence of the evidence to corroborate that the revision petitioner committed of the alleged offence, the trial court ought not to have held the accused guilty for the charges. The Appellate Court had also erred in confirming the conviction under Section 353 of I.P.C instead of 307 of I.P.C., without altering the charge. Further, the learned counsel would also specifically submit that the alleged offence under Section 21(4) of Mines and Minerals Act, does not attract in the given facts.

8. Per contra, the learned Government Advocate (Criminal side) would submit that the fact of illicit mining has been spoken by P.W.1 and P.W.2, who were present at the scene of occurrence, based on a specific information. A minor discrepancy in the time of receiving the information and arrival, will not falsify the case of the prosecution, in the light of the fact that the said Tempo was recovered with river sand loaded. The accused / driver cum owner of the said vehicle was apprehended by the police in the presence of P.W.5, by the Investigation Officer P.W.7.



9. P.W.1 to P.W.3 being public servants, while discharging their duty, the accused herein had escaped from the scene of occurrence along with the stolen river sand in his vehicle putting the public servants under the threat and using criminal force. Therefore, though the charge of an offence under Section 307 was not made out, the lower appellate Court had rightly convicted the accused for lesser offence under Section 353 of I.P.C.

10. Point for consideration:

"Whether there is any infirmity or irregularity in the order of the lower appellate Court modifying the conviction and sentence imposed by the trial Court?".

11. The revision petitioner has been identified as the driver of the offending vehicle bearing Registration No. TN-69-E-6522 by P.W.1, P.W.2 and P.W.3. The complaint (Ex.P.1) discloses the description of the vehicle and the registration number. The recovery of the vehicle is spoken by P.W.5 Mahalingam as well as Investigation Officer (P.W.7). All the witnesses for the prosecution are the official witnesses. This one fact cannot per se be a ground to disbelieve their evidence as not reliable. When their evidence of P.W.1 to P.W.3 are cogent and convincing, their evidence is sufficient to convict the accused.

12. Heard both sides. Records perused.

13. Considering the charge framed against the accused and the facts said to have been proved by the courts below, it is pertinent to note that the revision petitioner is specifically charged for an offence under Section 21(4) Mines and Minerals Act, which reads as under:

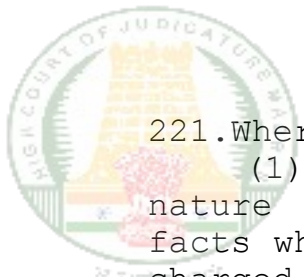
"Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment vehicle or any other thing shall be liable to be seized by an officer of authority specially empowered in this behalf."

14. Section 21 of the said Act deals with penalty to be imposed in case of any contravention of the provisions of the Act. The other charge framed against the appellant by the trial court is offence under Section 307 IPC. Though the trial court has found him guilty for offence under Section 307 IPC, on appeal, the lower appellate Court has converted this charge into offence under Section 353 I.P.C.

15. Section 221 and 222 of Cr.P.C., say Where it is doubtful what offence has been committed and When offence proved included in offence charged. The said Sections are extracted below.

<https://hcservices.ecourts.gov.in/hcservices/>

Where it is doubtful what offence has been committed.



221. Where it is doubtful what offence has been committed.

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

222. When offence proved included in offence charged.

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

16. By virtue of these two Sections, in case, the accused is charged with an offence and it appears in evidence that he has committed a different offence. He may be convicted for the offence proved but not charges specifically. But, this concession given in sub-section (2) of 222 Cr.P.C. can be applied only when the proven charge for which the person is convicted must be a minor offence to that of the offence charged and tried.

17. Therefore, we have to find out whether 353 IPC can be considered as a minor offence to that of 307 of I.P.C. and whether these two offences are cognate offences?



legality in converting the conviction under Section 307 IPC into the conviction under Section 353 without framing a charge for the said distinct offence. The conviction and sentence imposed on the revision petitioner is liable to be set aside.

22. In the result, this Criminal Revision Case is allowed and the conviction and sentence passed in S.C.No.257 of 2017 by the learned Assistant Sessions Judge, Valliyoor as modified in Crl.A.No.151 of 2008 by the learned Additional District and Sessions Judge, Fast Track Court No.I, Tirunelveli set aside. The revision petitioner is set at liberty. Fine amount, if any, paid by him, shall be refunded forthwith. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

- 1.The Additional District Sessions Judge,
(Fast Track Court No.I), Tirunelveli.
- 2.The Assistant Sessions Judge,
Vallioor.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai.
- 4.The Inspector of Police,
Tisayanvilai Police Station,
Tirunelveli District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 6.The Record Keeper, Criminal Section,
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

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