

**BAIL SLIP**

Mr.Selvaganesan S/o. Thangamalai aged about 30 years Accused No.1 was released on bail vide order of this Court dated 06.03.2013 in MP (MD)No.3/2013 in CRL RC(MD)36/2013.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.10.2018

DELIVERED ON : 09.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C(MD)No.36 of 2013

and

M.P(MD)No.4 of 2013

Selvaganesan : Petitioner/Respondent No.1
Accused No.1
Vs.

1.State through
The Sub-Inspector of Police,
Mamsapuram Police Station,
Virudhunagar District.
(Crime No.305 of 2009). : Respondent/ Respondent No.7
/Complainant

2.Desimuthu (died) : Respondent/Revision Petitioner/
Defacto Complainant

PRAYER: Criminal Revision Case is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, against the Judgment and conviction passed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhoor in CR.R.P.No.14 of 2011, dated 24.11.2012, reversing the Judgment passed by the learned Judicial Magistrate No.2, Srivilliputhoor, Virudhunagar District in C.C.No.254 of 2009, dated 03.01.2011.

For Petitioner : Mr.M.Jegadeeshpandian
for M/s.K.J.Associates.
For Respondent No.1 : Mr.A.Robinson,
Govt. Advocate (Criminal side).

ORDER

This revision petition is directed against the judgment of conviction passed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhoor in the revision against acquittal filed by the de facto complainant aggrieved by the order of acquittal passed by the Trial Court.

2.Based on the complaint given by one Desimuthu, the first respondent police registered FIR in Crime No.305 of 2009. After investigation final report has been filed alleging that due to previous enmity, on 26.09.2009 at about 08.00 a.m., A-1 to A-6 came



in a tempo van to the house of Desimuthu (de facto complainant). She was abused by Pichiammal (A-3) using filthy language, Selvaganesan (A-1) hit her on the right side head with wooden log causing cut injury; Chinnaraj (A-2), Mageswari (A- 5) and Kalimuthu (A-6) hit her with hands on her back and Bothi (A-4) threw stone at her right side shoulder causing contusion.

3.The Trial Court framed charges against the accused persons as below:

A-1, A-2, A-5 and A-6	: Sections 147, 451 and 323 of IPC.
A-3	: Sections 147, 451, 294(b) IPC
A-4	: Sections 147, 451, 324, 506(ii) IPC.

4.The prosecution to prove the charges examined 10 witnesses and marked 7 exhibits and 2 material objects.

5.The Trial Court after appreciating the prosecution evidence, acquitted all the accused of all charges.

6.Aggrieved by the order of the acquittal, dated 03.01.2011 passed by the learned Judicial Magistrate No.II, Srivilliputhoor, the de facto complainant filed CrI.R.P.No.14/2011 before the learned Principal Sessions Judge, Viruthunagar District at Srivilliputhoor.

7.The learned Principal Sessions Judge, Viruthunagar District at Srivilliputhoor confirmed the order of acquittal of all the accused except A-1 and convicted A-1 for offence under Sections 324 and 451 IPC and sentenced him to undergo 6 months rigorous imprisonment and to pay fine of Rs.1,000/- in default to undergo 1½ months rigorous imprisonment for each offence.

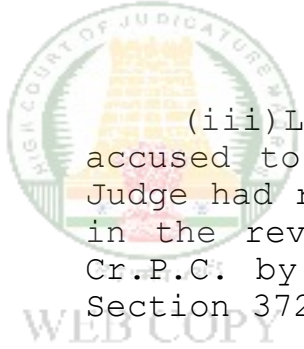
8.In this revision petition filed by the first accused, the Judgment of the learned Principal Sessions Judge, Viruthunagar District at Srivilliputhoor, is attacked on facts as well as law.

9.On perusal of the records, this Court holds that the revision petition is bound to be allowed for multiple reasons.

(i)Primarily, the learned Principal Session Judge while overlooking the evidence of the doctor (PW-8) who has certified that the injury sustained on the head of the de facto complaint is simple in nature, he has substituted his view that it being a cut injury and it must be considered as grievous hurt. While perversely holding so, he has convicted A-1 for offence under Section 324 IPC though this accused was not charged for the offence under section 324 IPC for causing grievous hurt or any other offence graver than causing grievous hurt. Thus, conviction is without charge or altering the existing charge.

(ii)Secondly, before convicting A-1 by reversing the order of acquittal, he has not followed the procedure laid under Section 235

(2) Cr.P.C., which mandates the accused must be questioned about the sentence to be imposed on him before he is found guilty and convicted.



(iii) Lastly, not only without affording opportunity to the accused to say about the sentence. The learned Principal Sessions Judge had reversed the order of acquittal and convicted the accused, in the revision petition filed under Sections 397, 399 and 401(4) Cr.P.C. by the aggrieved victim and not an appeal under proviso to Section 372 Cr.P.C.

10. In the result, the Criminal revision Case is allowed. The Judgement passed in CR.R.P.No.14 of 2011 on the file of the learned Principal Sessions Judge, Viruthunagar District at Srivilliputhoor is hereby set aside. The order of acquittal passed in C.C.No.254 of 2009 on the file of the learned Judicial Magistrate No.II, Srivilliputhoor, Viruthunagar District is restored. The revision petitioner/A.1 is acquitted. Bail bond if any executed by him, shall stand cancelled and fine amount, if any, paid by him is ordered to be refunded forthwith. Consequently, connected Miscellaneous Petition is closed.

Sd/-

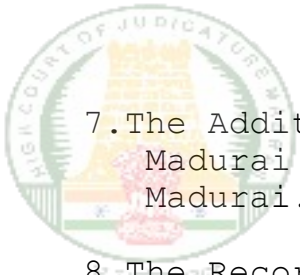
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Principal Sessions Judge,
Virudhunagar District
at Srivilliputhoor.
2. The Judicial Magistrate No.II,
Srivilliputhoor, Viruthunagar District.
3. -do-through- The Chief Judicial Magistrate,
Srivilliputhur, Virudhunagar District.
4. The District Collector,
Virudhunagar District.
5. The Director General Of Police,
Mylapore, Chennai.
6. The Sub-Inspector of Police,
Mamsapuram Police Station,
Virudhunagar District.



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

8.The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1CC TO MR.M.JEGADEESH PANDIYAN, ADVOCATE IN SR.NO.89806.

SMN

DS SKN SAR-2 11.10.2018 4P/11C

ORDER MADE IN
Crl.R.C (MD) No.36 of 2013
and
M.P (MD) No.4 of 2013
09.10.2018