**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reserving the Order	Date of Pronouncing the Order
07.09.2018	12 .09.2018

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CORAM**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

Crl.R.C (MD) No.47 of 2013

1. Packiam

2. Ayyanar

... Petitioners/Appellants/
Accused No. 1&2

Vs.

The State represented by
The Inspector of Police,
Malli Police Station
Virudhunagar District
(Crime No.25 of 2003)

... Respondent/Respondent/
Complainant

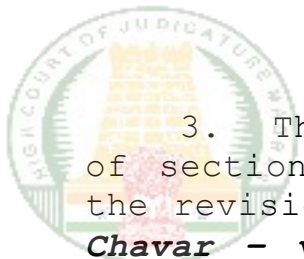
PRAYER: Criminal Revision Case is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records in Crl.A.No.24 of 2006 on the file of the learned Principal Sessions Judge, Virudhunagar District at Srivilluputhur and set aside the judgement dated 19.11.2012 partly and confirming the above conviction and sentence in S.C.No.171 of 2003 on the file of the learned Assistant Sessions Judge, Srivilliputhur dated 24.02.2006 and acquit the petitioners/accused.

For Petitioners : Mr.A.Thiruvadikumar
For Respondent : Mr.A.Robinson
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Petition has been filed to set aside the judgement dated 19.11.2012 partly and confirming the conviction and sentence in S.C.No.171 of 2003 on the file of the learned Assistant Sessions Judge, Srivilliputhur dated 24.02.2006 and acquit the petitioners/accused.

2.Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) for the respondent.



3. The Supreme Court has time and again examined the scope of section 397 r/w.401 of Cr.P.C and the ground for exercising the revisional jurisdiction by the High Court. In **Sanjaya Ramrao Chavar - vs- Dattatray Dulabrao Phalke and others** reported in **2015(3) SCC 123**, the Supreme Court has held that High Court in exercise of its revisional jurisdiction shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non consideration of any relevant materials, the order cannot be set aside merely on the ground that another view is possible.

4. In this revision, petition filed by the accused persons against the concurrent findings of the court below this Court find no scope to interfere the finding since there is no unreasonableness or perversity. However, the learned counsel appearing for the petitioners would submit that the trial court found the accused A1 and A2 guilty and imposed the following sentence, which required consideration.

Penal Provision(s) under which A1- Packiam -convicted	Sentence
Section 341 of IPC	One month Simple Imprisonment
Section 326 of IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default to undergo rigorous imprisonment for six months
Section 307 of IPC	Rigorous imprisonment for five years and to pay a fine of Rs.1,000/- and in default to undergo rigorous imprisonment for six months

Penal Provision(s) under which A2-Ayyanar -convicted	Sentence
Section 341 of IPC	One month Simple Imprisonment
Section 307 r/w.109 of IPC	Rigorous imprisonment for five years and to pay a fine of Rs.1,000/- and in default to undergo rigorous imprisonment for six months

5. On appeal the appellate Court has modified the conviction and sentence as below:



A1- Packiam	i) Conviction and Sentence under Section 341 and 307 of IPC confirmed. ii) Conviction under Section 326 of IPC is set aside
A2- Ayyanar	i) Conviction and Sentence under Section 341 and 307 r/w.109 of IPC confirmed. ii) Conviction under Section 326 of IPC is set aside

6. The only point canvassed before this Court is the circumstances mitigating the sentence. As per the joint memo of compromise filed by the victim and the revision petitioners 1 and 2, it is stated that they both have hail from the same village. The elders of the village have compromised their dispute which happened 15 years ago. Now they are living peacefully and amicability. The revision petitioners have adequately compensated the loss incurred. The petitioners have regretted for the untoward incident which has cause privation of the left eye.

7. Relying on the Judgments of the Honourable Supreme Court in
a) Surendra Nath Mohanty and others -vs- State of Orissa reported in 1999 SCC(Cri.) 998

b) Amarnath Shukla -Vs- State of Uttaranchal reported in 2010(1)SCC (Cri.) 7

c) Ramlal and another -Vs- State of Jammu and Kashmir reported in 1999 SCC(Cri.)123

d) Iswar Singh-Vs-State of Madhya Pradesh reported in 2009 (3) SCC(Cri)1153., the learned counsel appearing for the revision petitioner submit that though offence under Section 307 of IPC is not a compoundable offence in the light of the above judgments of the Supreme Court, taking into mitigating circumstances the Court may be pleased to confirm the conviction but modify the sentence as period already undergone.

8. The victim and the revision petitioner are present. They state that elders have prevailed upon them to shed this animosity and live peacefully. For the past ten years they are living amicably in the same village without disturbing peace and tranquility. Each of the revision petitioners have already undergone imprisonment as under trial prisoners and as convict for about 50 days.

9. Taking into consideration the facts and circumstances of the case, the mitigation circumstances, nature of injury caused and this Court while confirming the conviction of the accused as modified by the lower appellate court modify the period of



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sentence as under:

A1- Packiam	Sentence as modified in the Revision
Section 341 of IPC	One month Simple Imprisonment
Section 307 of IPC	Three month simple imprisonment and fine of Rs.1,000/-. In default to undergo simple imprisonment for one month Period of sentence shall run concurrently

A-2 Ayyanar	Sentence as modified in the Revision
Section 341 of IPC	One month Simple Imprisonment
Section 307 r/w.109 of IPC	Three month simple imprisonment and fine of Rs.1,000/-. In default to undergo simple imprisonment for one month Period of sentence shall run concurrently

10. For A1 and A2 period of sentence already undergone shall be set off under Section 428 of Cr.P.C. The revision petitioners are directed to surrender before the trial Court on or before 30.09.2018 to undergo the remaining period of sentence. The Criminal Revision Petition is partly allowed on the above terms.

Sd/-
Assistant Registrar (CS-III)

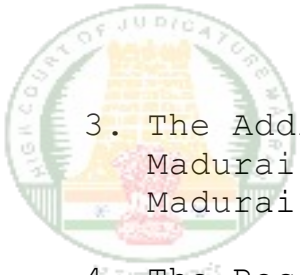
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Sub Assistant Registrar (CS-I)

To

1. The Principal Sessions Judge
Virudhunagar District
at Srivilliputhur

2. The Assistant Sessions Judge
<https://hcservices.ecourts.gov.in/hcservices/>
Srivilliputhur



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

4. The Record Keeper
Vernacular Section (2 Copies)
Madurai Bench of Madras High Court,
Madurai

+1cc to Mr.A.Thiruvadikumar, Advocate SR.No.83981

Aav

MK/RP/SAR 1/17.09.2018/5P/7C

ORDER MADE IN
Cr1.R.C(MD)No.47 of 2013
12.09.2018