

Bail Slip

The Petitioners/Accused viz (1) Ramasamy, (2) Muthuraj, (3) Muthayammal were directed to be released on bail as per order of this court dt.14/9/2012 in Mp.No.1 of 2012 in Crl.Rc..1172/2012 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1172 of 2012

1. Ramasamy

2. Muthuraj

3. Muthayammal Petitioners/Accused 1to3

Vs.

State by

The Inspector of Police,
Vellode Police Station,
Erode District.
(Crime No.152 of 2006)

.. Respondent/Complainant

Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to call for the records relating to the conviction imposed in the judgment dated 18.07.2012 made in C.A.No.99 of 2011 on the file of the Second Additional District/Sessions Court, Erode, confirming the conviction and modifying the sentence imposed in the judgment dated 17.08.2011 made in C.C.No.364 of 2006 on the file of the District Munsif-cum-Judicial Magistrate, Perundurai and set aside the same.

For Petitioner : Mr.N.Manokaran

For respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision has been filed to set aside the judgment dated 18.07.2012 passed in Crl.A.No.99 of 2011 by the learned Second Additional District/Sessions Judge, Erode, while confirming the conviction, modifying the sentence imposed by judgment dated 17.08.2011 passed in C.C.No.364 of 2006 by the

learned District Munsif-cum-Judicial Magistrate, Perundurai.

2. The case of the prosecution is that the accused 1 to 3 were obtained a Housing loan on 10.04.2000 and also 28.4.2000 to the tune of Rs.5,00,000/- in two instalments and on 1.12.2001 onwards, the accused failed to repay the said loan amount. Hence, on 30.11.2004, the LIC Housing Finance Company issued show cause notice to the accused. The accused were already mortgaged their agricultural land in Thenmugam Vellode Village Survey Nos.1327/3, 1329/1, R.S.Nos.1346/5 and 3, 1346/5. After receipt of the show-cause notice, the accused have not repaid the loan amount. Hence, the authorities of the LIC Housing Finance Limited initiated action against the property of the second accused through SARFAESI Act and on 28.03.2005, the District Collector, Erode ordered to take possession of the house properties of the accused. The house stands in the name of second accused Muthuraj. Based upon the order of the District Collector, on 20.04.2005, the possession was taken by the LIC Housing Finance Authorities and they locked the door. The second accused on 28.04.2005 filed a writ petition before this Court in WP.Nos.14619/2005 and 14620/2005 and this Court ordered to pay the loan amount by two instalments on 10.8.2005 and 10.9.2005 to the LIC Housing Finance Limited. But, the accused failed to pay the instalments to the concerned company. On 15.07.2006, PW-1 went to inspect the house, which was already taken possession by the LIC Housing Finance Limited, Coimbatore and he found that the accused 1 to 3 were break open the lock and they were residing in the house and hence, he lodged a complaint before the respondent police. A case in Crime No.152 of 2006 for the offence under Section 188, 448 and 451 of IPC against the accused. After completing investigation, the respondent police laid a charge sheet before the learned District Munsif-cum-Judicial Magistrate, Perundurai and the same was taken on file in C.C.No.364 of 2006. After trial, the learned Magistrate convicted the accused for the offence under Sections 188, 448 and 451 of IPC and sentenced them as follows:-

Accused	Offence	Sentence
A1	188, 488 and 451 of IPC	Fine of Rs.200/-, in default, one week Simple Imprisonment for the offence u/s 188 of IPC and fine of Rs.1,000/-, in default, one month Simple Imprisonment for the offence under Section 448 of IPC and 6 months Rigorous Imprisonment and fine of Rs.300/- in default, one month Simple Imprisonment for the offence under Section 451 of IPC.

Accused	Offence	Sentence
A2	188, 488 and 451 of IPC	Fine of Rs.200/-, in default, one week Simple Imprisonment for the offence u/s 188 of IPC and fine of Rs.1,000/-, in default, one month Simple Imprisonment for the offence under Section 448 of IPC and 6 months Rigorous Imprisonment and fine of Rs.300/- in default, one month Simple Imprisonment for the offence under Section 451 of IPC.
A3	188, 488 and 451 of IPC	Fine of Rs.200/-, in default, one week Simple Imprisonment for the offence u/s 188 of IPC and fine of Rs.1,000/-, in default, one month Simple Imprisonment for the offence under Section 448 of IPC and 6 months Rigorous Imprisonment and fine of Rs.300/- in default, one month Simple Imprisonment for the offence under Section 451 of IPC.

Challenging the said order, the accused preferred an appeal in CrI.A.No.99 of 2011 before the learned Principal District and Sessions Judge, Erode. After taking the appeal on file, the learned Sessions Judge made over the case to the learned Second Additional District and Sessions Judge, Erode for disposal. After hearing the arguments, the learned Sessions Judge partly allowed the appeal by confirming the conviction and fine amount and modified the imprisonment to fine amount i.e., by directing the accused to pay a sum of Rs.25,000/- each to the LIC Housing Finance Limited within one month, by judgment dated 18.07.2012. Against the said judgment, the accused preferred the present revision before this Court.

3. It is reported by the learned counsel appearing for the petitioners that during pendency of this revision, the third petitioner died on 10.02.2015. Hence, this Criminal Revision Case is dismissed as abated as against the third petitioner herein/A3.

4. The learned counsel appearing for the revision petitioners 1 & 2 would submit that the possession was taken on 20.04.2005, subsequently, the revision petitioners filed writ petitions before this Court. Since this Court passed the conditional order in the said writ petitions, the petitioners/accused have not complied with the conditions. PW-1, who was not the officer at the time of taking the possession i.e., on 20.04.2005 and he could not see the revision petitioners in the earlier occasion, he joined only in the year of 2006. Therefore, he was not the competent authority to

identify the accused. The revision petitioners were in the possession on 15.07.2006. Both the Courts below failed to consider the fact that the possession was taken from the revision petitioners on 20.04.2005 itself, subsequently, they have stated that on 15.07.2006, the revision petitioners break open the door and they were found in the possession and thereafter, they given the complaint only on 21.07.2006. The delay in preferring the complaint has not been properly explained. In the absence of any independent witness, the prosecution can not prove its case beyond reasonable doubts. PW-4-Village Administrative Officer, who is the mahazar witness for taking the possession on 20.04.2005. Both the Courts below failed to consider that the prosecution has not proved its case beyond reasonable doubts. Hence, the judgments of the Courts below warrants interference.

5. Heard the learned counsel for the revision petitioners and the learned Government Advocate (Crl. Side) appearing for the respondent and also perused the entire materials available on record.

6. The case of the prosecution is that on 20.04.2005, the defacto complainant taken the possession of the property from the revision petitioners and after taking the possession, he locked the same. When PW-1 went to the place on 15.07.2006 as usual inspection, at that time he found that the revision petitioners break open the lock and they were inside the house and thereafter, he preferred the complaint before the respondent police on 21.07.2006. PWs-1 to 3-the officials of the defacto complainant's company have clearly spoken about the possession taken by the LIC Housing Finance Company on 20.04.2005. On reading of the evidence of PWs-1 to 3, it is seen that the defence taken by the revision petitioners are not acceptable. Admittedly, the revision petitioners filed writ petitions before this Court for recovery of possession of the property and in the said petitions, conditional order was passed by this Court and the condition imposed by this Court was not complied with, subsequently, the revision petitioners were found in the possession of the locked house.

7. In the circumstances, this Court finds that the prosecution has proved its case beyond reasonable doubts. Both the Courts below rightly appreciated the oral and documentary evidence produced by the prosecution. There is no perversity in the judgment of the Courts below and there is no reason to interfere with the judgment passed by the Courts below.

8. In the result, this Criminal Revision Case is dismissed. The judgment dated 18.07.2012 in C.A.No.99 of 2011 on the file of the Second Additional District/Sessions Court, Erode is hereby confirmed.

Sd/-
Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

KMI

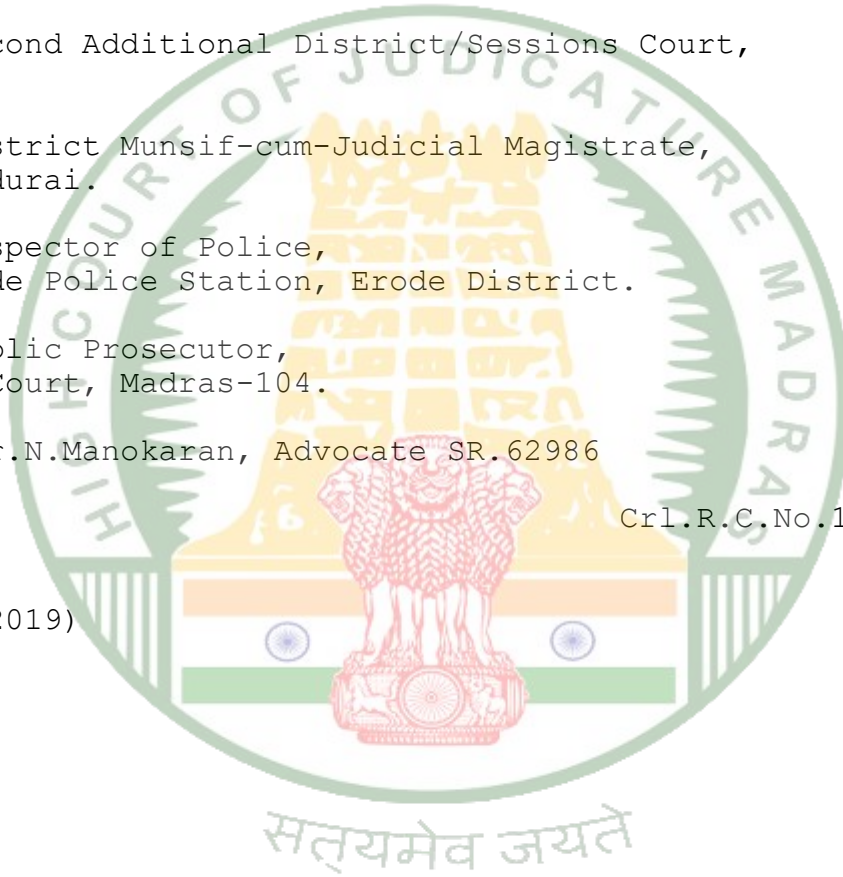
To

1. The Second Additional District/Sessions Court,
Erode.
2. The District Munsif-cum-Judicial Magistrate,
Perundurai.
3. The Inspector of Police,
Vellode Police Station, Erode District.
4. The Public Prosecutor,
High Court, Madras-104.

+1cc to Mr.N.Manokaran, Advocate SR.62986

Crl.R.C.No.1172 of 2012

RR(CO)
CB(17/10/2019)



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