

Bail Slip

The Petitioner in CrI.R.C.No.1209/12 viz Mr.Karthikeyan, S/o Natarajan, aged 43 was directed to be released on bail as per order dated 25/9/12 and made in MP.NO 1/12 and 3/12 in CrI.R.C.No. 1209/12.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.1209 of 2012
and
M.P.No.2 of 2012

Karthikeyan

....Petitioner

-Vs-

The State represented by the
Mallur Police Station,
Salem District.
Crime No.349 of 2003

...Respondent

Criminal Revision Case filed under Section 397 read with Section 401 of Cr.P.C. to set aside the judgment dated 11.08.2012 in C.A.No.34 of 2012 on the file of the learned III Additional District and Sessions Judge, Salem confirming the judgment dated 23.02.2012 in C.C.No.76/2004 on the file of the learned Judicial Magistrate No.VI, Salem.

For Petitioner :R.Nalliyappan

For Respondent :Mr.T.Shanmugarajeswaran
Government Advocate (CrI. side)

O R D E R

This revision has been filed to set aside the judgment dated 11.08.2012 in C.A.No.34 of 2012 on the file of the learned III Additional District and Sessions Judge, Salem confirming the judgment dated 23.02.2012 in C.C.No.76/2004 on the file of the learned Judicial Magistrate No.VI, Salem.

2. The respondent police registered a case in Crime No.349 of 2003 against the revision petitioner for the offences under Section 279, 337(2 counts), 338 and 304(A) IPC. After investigation, the respondent Police filed charge sheet against the petitioner before the learned Judicial Magistrate-VI, Salem for the above said offences and the same was taken on file in C.C.No.76 of 2004. During trial, on the side of the prosecution, the respondent police has examined as many as 15 witnesses viz., P.W.1 to P.W.15 and marked 15 documents viz., Ex.P1 to Ex.P15. On the side of the defence, no oral and documentary evidence was produced. After full-fledged trial, the learned Magistrate found the accused guilty for the offence punishable under Sections 279, 337(2 counts), 338 and 304(A) IPC and convicted and sentenced to pay a fine of Rs.500/- in default, to undergo simple imprisonment for one week for the offence under Section 279 IPC; and convicted the accused for the offence under Section 338 IPC and sentenced to pay a fine of Rs.750/-, in default, to undergo three months simple imprisonment; and convicted the accused for the offence under Section 337 (2 counts) IPC and to pay a fine of Rs.250/- each count and to undergo one week simple imprisonment; and convicted the accused for the offence under Section 304(A) IPC and sentenced him to undergo one year rigorous imprisonment, in default, to undergo six months simple imprisonment.

3. Challenging the order passed by the learned Magistrate-VI, Salem in C.C.No.76 of 2004, dated 23.02.2012, the revision petitioner preferred appeal before the learned Sessions Judge, Salem. The learned Sessions Judge taken the appeal on file in C.A.No.34 of 2012 and the same was made over to the learned III Additional District and Sessions Judge, Salem. After hearing the arguments advanced on both sides, the learned Sessions Judge, dismissed the appeal and confirmed the judgment passed by the learned Magistrate. As against the judgment passed by the learned III Additional District and Sessions Judge, the revision petitioner has filed the present revision case before this Court.

4. The learned counsel for the petitioner would submit that none of the witnesses have spoken about the manner of the accident that due to the rash and negligent driving of the driver of Tempo traveller bearing Registration No.TN 23 N 4229, the accident had happened. Further he would submit that none of the witnesses have spoken about the name of the revision petitioner. The revision petitioner has not driven the tempo, at the time of the accident. Even P.W.4, who is the complainant and witness in this case, has not stated the name of the driver. During cross examination, he has stated that the revision petitioner did not drive the tempo at the time of the accident

and some other person has driven the vehicle. P.W.15 the Inspector of Police has not stated, who has identified the revision petitioner. Ex.P15 Motor Vehicle Inspector's report is not admissible in evidence, since it is not marked through the Motor Vehicle Inspector and the revision petitioner has not been given opportunity to cross examine the Motor Vehicle Inspector. Except P.W.15, the Motor Vehicle Inspector's report, nowhere stated that the revision petitioner alone was driving the tempo at the time of the accident. In the absence of any specific evidence, both the Courts below have wrongly come to the conclusion that the revision petitioner was driving the vehicle and due to the rash and negligence of the driver, the accident had occurred, which warrants interference of this Court.

5. The learned Government Advocate (Crl. side) would submit that P.W.4 has stated that he knows the person who drove the vehicle at the time of the accident. He was examined in chief, in the year 2006, on the day, though the learned counsel for the petitioner was present and without any reason, he has not cross examined P.W.1 to P.W.4. Even after six years, when he recalled to put suggestions, both the Courts have rightly rejected the recall petition with regard to the cross examination and rightly come to the conclusion that the revision petitioner has committed the offences under Section 279, 337(2 counts), 338 and 304(A) IPC and there is no reason to interfere with the judgments of the both the Courts below.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. side) and perused the materials available on record.

7. It is the case of the prosecution that on 02.06.2003 at about 5.00 a.m. P.W.4 along with his workers and 4 others were standing in his tea stall. At that time, the tempo bearing Registration No.TN 23 N 4229 was driven by the revision petitioner in rash and negligent manner, diverted from the road and entered into a shop. He caused injuries to those who were standing in front of the shop. Based on the complaint, the respondent police registered the case and laid charge sheet against the revision petitioner. Though the learned counsel for the petitioner submitted that there is no evidence to show that the revision petitioner alone has driven the offending vehicle at the time of the accident, on reading of the evidence of P.W.1, it is apparent that he deposed that he has seen the driver. But, in cross examination, he has stated that one Arun has driven the vehicle at the time of the accident. After six years, the counsel for the petitioner sought to recall P.W.1 for cross examination but the same was dismissed. As stated by the learned counsel for the petitioner, Ex.P13 clearly shows that the revision petitioner is the owner of the tempo traveller

bearing Registration No.TN 23 N 4229 and he has shown as driver of the said vehicle at the time of the accident.

8. Once the accident is admitted, both the Courts below have elaborately discussed the evidence of P.W.1 and P.W.4 and mahazar witnesses and the Motor Vehicle Inspector's report, which clearly show that the accident happened only due to the rash and negligent driving of the revision petitioner. Once the trial Court and the Appellate Court rightly appreciated the evidence in the right perspective and came to the conclusion that the revision petitioner has committed the offences as mentioned above, this Court being a revisionary Court, while exercising its revisionary jurisdiction, has to see as to whether there is any perversity in appreciating the evidence by the Courts below. On reading of the entire materials, it is seen that the revision petitioner had driven the vehicle in a rash and negligent manner and caused the accident.

9. Both the Courts below have gone through the evidence in detail and found that the petitioner was at fault and found him guilty. The prosecution has proved its case with cogent and reliable evidence. There is no reason to discard the evidence of the prosecution witnesses. Both the Courts below have given reason for conviction. Hence, the revision court cannot interfere with the judgments.

10. This Court does not find any perversity in the judgment of the appellate court to take a different view in the present case on hand and there is no merit in the revision. However, the accident may not be an intentional one and it is only due to rash and negligent driving. Considering the age of the revision petitioner, in order to meet the ends of justice, this Court is inclined to modify the sentence from one year to three months.

11. With the above modification and observation, this Criminal Revision is partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

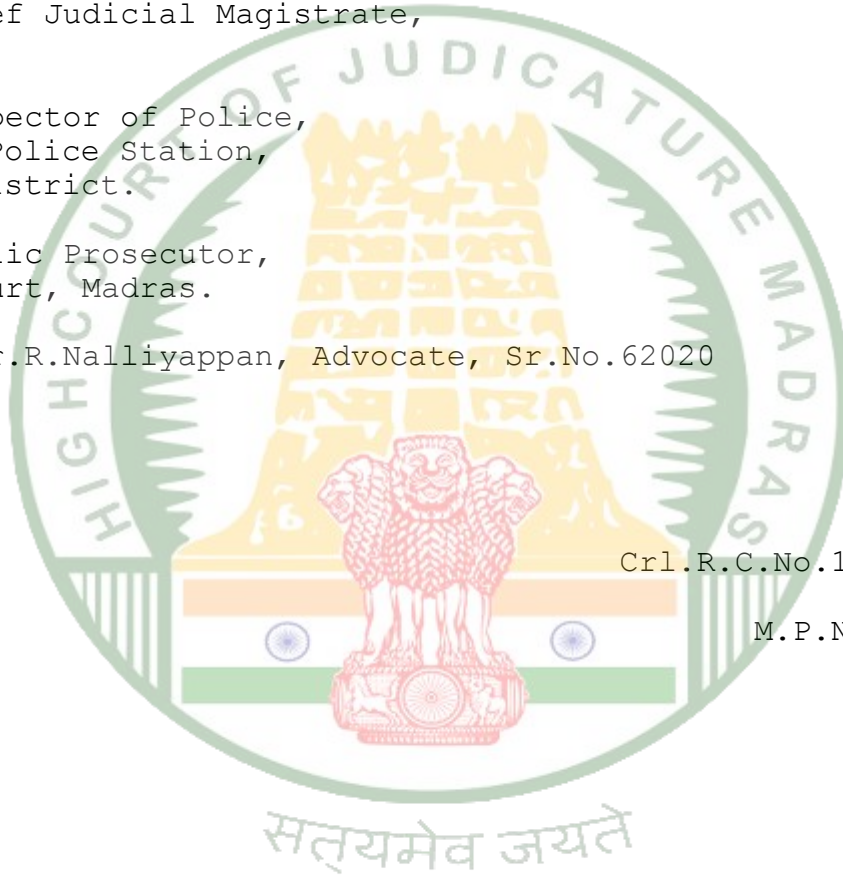
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Sub Assistant Registrar

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To

- 1.The III Additional District and Sessions Judge,
Coimbatore.
 - 2.The Principal District Judge,
Coimbatore.
 - 3.The Judicial Magistrate VI,
Salem.
 - 4.The Chief Judicial Magistrate,
Salem.
 - 5.The Inspector of Police,
Mallur Police Station,
Salem District.
 - 6.The Public Prosecutor,
High Court, Madras.
- +1cc to Mr.R.Nalliyappan, Advocate, Sr.No.62020



Crl.R.C.No.1209 of 2012
and
M.P.No.2 of 2012

VD(CO)
GS(01/06/2020)

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