

Bail Slip

The Petitioner herein C.Sivakumar/Accused 1 S/o Chinnannan, aged 31 years is directed to be released on bail vide order of this Court made in MP NO.1/12 in Crl.R.C.No.1464/12 dated 07/12/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl. R.C. No.1464 of 2012

C.Sivakumar Revision Petitioner /Accused

Vs.

State rep. by
The Sub-Inspector of Police,
K.R.P. Dam Police Station,
Krishnagiri,
Krishnagiri District. Respondent/Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 21.06.2012, passed by the Principal Sessions Judge, Krishnagiri, in C.A.No.56 of 2010, partly modifying the judgment of conviction and sentence, dated 06.09.2010, passed by the Judicial Magistrate No.II, Krishnagiri, in C.C.No.193 of 2009.

For Petitioner : Mr.L.Baskaran

For Respondent: Mrs.Kritika Kamal. P.
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision Case has been filed against the judgment dated 21.06.2012, passed by the Principal Sessions Judge, Krishnagiri, in C.A.No.56 of 2010, partly modifying the judgment of conviction and sentence, dated 06.09.2010, passed by the Judicial Magistrate No.II, Krishnagiri, in C.C.No.193 of 2009.

2.For the sake of convenience, the petitioner will be referred to as accused.

3.It is the case of the prosecution that, on 30.01.2008 around 07.00 a.m., when the accused, the driver of tipper lorry, bearing Registration No.KA-01-B-8583, was reversing his lorry, he hit the two wheeler of the deceased Rajendran, resulting in the death of Rajendran. On the complaint lodged by Priyanka (P.W.1), the daughter of the deceased, the police registered a case in Crime No.21 of 2008, and after completing the investigating, filed a final report in C.C.No.193 of 2009 for the offences under Sections 279 and 304-A IPC, before the Judicial Magistrate No.II, Krishnagiri, against the accused.

4.To prove the case, the prosecution examined 15 witnesses and marked Exs.P1 to P6. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined nor any document marked on the side of the accused.

5.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 06.09.2010 in C.C.No.193 of 2009, convicted and sentenced the accused as follows :

Provision under which convicted	Sentence
Section 279 IPC	Fine of Rs.500/-, in default, simple imprisonment for one month
Section 304-A IPC	Simple imprisonment for six months and also a fine of Rs.1000/-, in default, simple imprisonment for one month

6.The appeal in C.A.No.56 of 2010 that was filed by the accused was heard by the Principal Sessions Judge, Krishnagiri. The appellate Court, by judgment dated 21.06.2012, acquitted the accused of the offence under Section 279 IPC and confirmed the conviction and sentence for the offence under Section 304-A IPC.

7.Challenging the concurrent findings of the two Courts below qua the offence under Section 304-A IPC, the accused has filed the present Criminal Revision Case under Section 397 r/w. 401 Cr.P.C.

8.Heard learned counsel for the accused and learned Government Advocate (Crl. Side) appearing for the respondent.

9.It is trite that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second

appellate Court [See State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand and Others, etc. (2004) 7 SCC 659]. Very recently, in Bir Singh vs. Mukesh Kumar [(2019) 4 SCC 197], the Supreme Court has held as under:

"17.As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457] , it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error."

(emphasis supplied)

10.The prosecution has proved beyond cavil that the deceased Rajendran lost his life in a road accident on 30.01.2008. The short question is, whether the death was on account of the rash and negligent act of the accused.

11.Priyanka (P.W.1), in her evidence, has stated that her father was taking her to school by his two wheeler bearing Registration No.TN-24-Y-5571 on 30.01.2008; while they were proceeding towards Krishnagiri, a tipper lorry which was going in front of them suddenly stopped and started reversing; the driver of the tipper lorry did not notice their two wheeler coming behind and dashed against their two wheeler resulting in the death of her father. She was subjected to cross-examination by the defence, but they were not able to make much dent in her testimony.

12.Thus, a reading of Priyanka's (P.W.1's) evidence shows that the accused, who was the driver of the tipper lorry, started reversing the lorry unmindful of the presence of the vehicle of the deceased behind his vehicle. Both Courts have appreciated the evidence on record in the right perspective and this Court does not find any infirmity in the findings of fact arrived at by the two Courts below, warranting interference.

13.However, the learned counsel for the accused submitted that this Court may show some leniency in the sentence, inasmuch as this is not a case, where there was head-on collision or dashing of the vehicle from behind. He also submitted that the accused is ready and willing to pay Rs.1,00,000/- (Rupees one lakh only) as compensation to the widow of the deceased even though she had received compensation under the Motor Vehicles Act, 1988.

14.Mr.P.Manickam, Sub-Inspector of Police, K.R.P. Dam Police Station, Krishnagiri, has produced Mrs.Maheswari, widow of the deceased and Mr.Yogeswaran, son of the deceased. They have stated that they have received compensation of Rs.18,00,000/- in M.C.O.P. proceedings and they have no objection in this Court showing sympathy to the accused on the question of sentence.

15.As contended by the learned counsel for the accused, this is not a case where there was an head-on collision or the accused had dashed against the two wheeler from behind. Admittedly, the accused was reversing the tipper lorry and had not noticed the presence of the deceased behind his vehicle. The widow and son of the accused agreed to receive Rs.1,00,000/- as compensation from the accused. Accordingly, the accused remitted Rs.1,00,000/- through RTGS into the Indian Bank account of Maheswari, who has also confirmed that the amount has been credited to her account.

16.The learned counsel for the accused submitted that the incident had taken place on 30.01.2008 and the accused was arrested on 01.02.2008 and remanded to custody. On account of boycott of Court by lawyers, the accused could not be released on bail, though the offence under Section 304-A IPC is a bailable one and the accused was in custody for one week before his release on bail.

17.In view of the above discussion, the conviction of the accused for the offence under Section 304-A IPC stands confirmed, but the sentence of six months simple imprisonment is reduced to the period already suffered.

In the result, this Criminal Revision Case is partly allowed.

सत्यमेव जयते Sd/-

Assistant Registrar(CS VI)

//True Copy//

WEB COPY

Sub Assistant Registrar

mkn

Copy to :

1.The Principal Sessions Judge,
Krishnagiri.

2.The Chief Judicial Magistrate,
Krishnagiri.(For Information)

3.The Judicial Magistrate No.II,
Krishnagiri.

4.The Director of Police,
K.R.P.DAM Police Station,
Krishnagiri.

5.The Public Prosecutor,
High Court, Madras

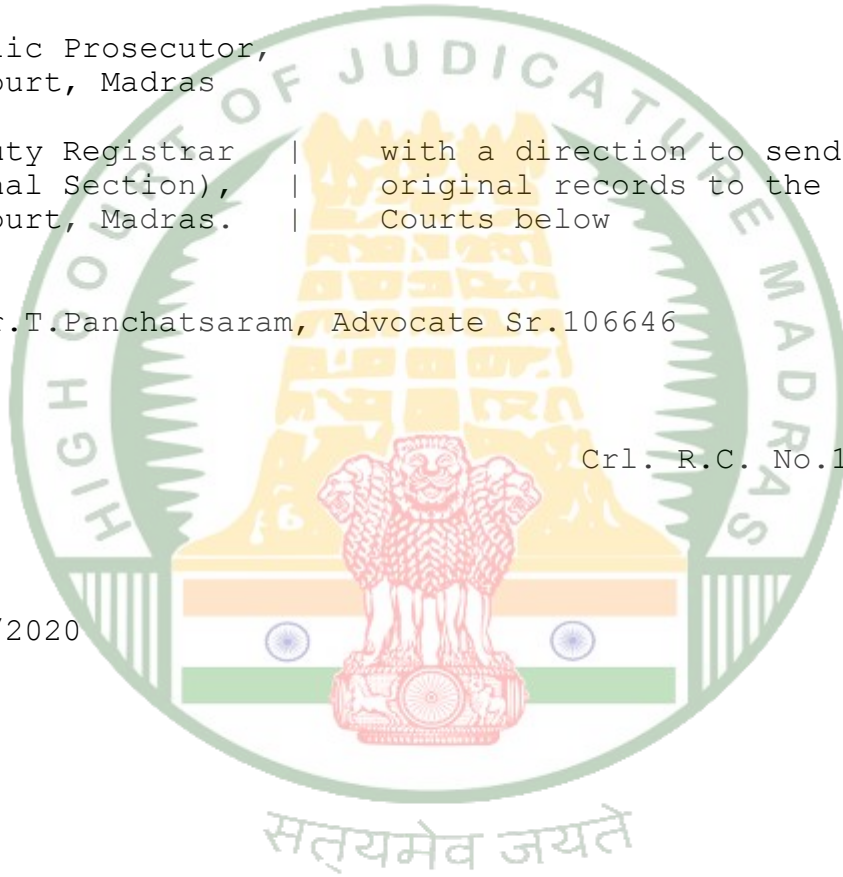
6.The Deputy Registrar | with a direction to send back the
(Criminal Section), | original records to the respective
High Court, Madras. | Courts below

+1cc to Mr.T.Panchatsaram, Advocate Sr.106646

Crl. R.C. No.1464 of 2012

BS (CO)

srg 10/02/2020



WEB COPY