

Bail Slip

The Petitioner/Accused viz., G.Vinayagamoorthy, was released on bail as per order of this Court dated 18/12/2012 in Crl.M.P.No.1 of 2012 in Crl.RC.No.1523 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.09.2019

PRONOUNCED ON : 19.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1523 of 2012

G.Vinayagamoorthy

.. Petitioner/Accused

Vs

State rep. by
Sub Inspector of Police,
Kichipalayam Police Station,
Salem.

.. Respondent/Complainant

Criminal Revision preferred under Section 397 read with 401 Cr.P.C. challenging the judgment and order dated 10.07.2012 passed by the II Additional District and Sessions Judge, Salem in C.A.No.152 of 2010 confirming the conviction and sentence dated 17.09.2010 passed by the Judicial Magistrate, Salem in C.C.No.120 of 2009.

For Petitioner : Mr.P.Ezhil Nilavan

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

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O R D E R

This revision has been preferred challenging the judgment and order dated 10.07.2012 passed by the II Additional District and Sessions Judge, Salem in C.A.No.152 of 2010 confirming the conviction and sentence dated 17.09.2010 passed by the Judicial Magistrate, Salem in C.C.No.120 of 2009.

2. It is the case of the prosecution that, on 11.02.2009 around 10.00 p.m., the petitioner, who was drunk, picked up a quarrel with his wife Dhanalakshmi (P.W.1) and attacked her with a stick, resulting in serious injuries to her. Dhanalakshmi (P.W.1) was rushed to the hospital, where she was treated by Dr.Sivakumar (P.W.5) and was admitted as inpatient. Intimation was sent to the police by the hospital authorities. While under treatment, Dhanalakshmi (P.W.1) gave a statement (Ex.P1), based on which, a case in Crime No.225 of 2009 was registered and after completing the investigation, the police filed a final report in C.C.No.120 of 2009 in the Court of the Judicial Magistrate No.II, Salem against the petitioner for the offences under Sections 498A, 324 and 506(II) IPC.

3. Charges for the aforesaid offences were framed and when questioned, the petitioner pleaded "not guilty". The prosecution examined six witnesses and marked Ex.P1 to Ex.P6. When the petitioner was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. On the side of the petitioner, two witnesses viz. Manonmani (D.W.1) and Shanmugam (D.W.2) were examined.

4. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 17.09.2010 in C.C.No.120 of 2009 convicted and sentenced the petitioner as under :

Provision under which convicted	Sentence
Section 498A IPC	1 year rigorous imprisonment and fine of Rs.5,000/-, in default to undergo 3 months simple imprisonment
Section 324 IPC	6 months rigorous imprisonment and fine of Rs.2,500/-, in default to undergo 3 months simple imprisonment
Section 506(II) IPC	6 months rigorous imprisonment and fine of Rs.2,500/-, in default to undergo 3 months simple imprisonment

The aforesaid sentences were ordered to run concurrently. The appeal in C.A.No.152 of 2010 filed by the petitioner, was dismissed by the II Additional District and Sessions Court, Salem on 10.07.2012. Challenging the concurrent findings of the two Courts below, the petitioner has filed the present revision under Section 397 read with 401 Cr.P.C.

5. Heard Mr.P.Ezhil Nilavan, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

6. Before advertng to the rival submissions, it may be necessary to state here that, a three Judge Bench of the Supreme Court in Girish Kumar Suneja Vs. CBI [(2017) 14 SCC 809], has held that revisional jurisdiction is a discretionary one and can be exercised only if the High Court finds that there is an error apparent on the face of the record and for better appreciation, the relevant portion of the order is extracted hereunder:

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 Cr.P.C."

6.1. While exercising revisional powers under Section 397 r/w 401 Cr.P.C., this Court is required to find out, if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context, it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra Vs Jagmohan Singh Kuldip Singh Anand and Others, etc. [(2004) 7 SCC 659]:

"22.The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of

revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

“for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court”.

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

(emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in *Duli Chand v. Delhi Admn.* [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

“The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse.”

6.2. This legal principle has been reiterated very recently by the Supreme Court in *Bir Singh Vs Mukesh Kumar* [(2019) 4 SCC 197], wherein, the following question of law was formulated :

“(i) whether a Revisional Court can, in exercise of its discretionary jurisdiction, interfere with an order of conviction in the absence of any jurisdictional error or error of law”

The answer of the Supreme Court to the aforesaid question is as under :

"19.It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

20.As held by this Court in *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. The answer to the first question is therefore, in the negative."

7. Mr.P.Ezhil Nilavan, learned counsel for the petitioner contended that, the complaint in this case was given only on the next day and there is a delay of 17 hours and in that complaint, the presence of Pattammal (P.W.2) and Sivagami (P.W.3) has not been stated by Dhanalakshmi (P.W.1).

8. In this case, the incident had taken place at 10'0 clock in the night on 11.02.2009 and Dhanalakshmi (P.W.1) was taken to the hospital, where she was examined by Dr.Sivakumar (P.W.5) at 05.20 a.m. on 12.02.2009. Only thereafter, intimation was sent by the hospital authorities to the police and by the time the police came and recorded the statement of Dhanalakshmi (P.W.1), the delay had occasioned. In the facts and circumstances of this case, the delay in registration of the F.I.R. by the police cannot be said to be fatal.

9. Dhanalakshmi (P.W.1), in her evidence, has stated that, the petitioner came drunk and picked up a quarrel with her, by casting aspersions on her morality; he told her that he will pour acid on her face, if she goes out; saying so, he held her by her ear and assaulted her; her ear started bleeding; he took a stick and hit her on her left hand and when she started hollering, her mother Pattammal (P.W.2) and her sister Sivagami (P.W.3) came to rescue her. Just because she had not said anything about Pattammal (P.W.2) and Sivagami (P.W.3) in her statement, that by itself will not make her evidence suspect. After all, an F.I.R. is not an encyclopedia of the prosecution case. Dhanalakshmi (P.W.1) has further stated that since it was late night, they did not take her to the hospital and she was taken early morning i.e. on the next day. As stated above, Dr.Sivakumar (P.W.5) examined her at 05.20 a.m. and has noted the following injuries :

"lacerated wound in right ear ½cm x ½cm and pain in the left knee"

In the cross-examination, Dr.Sivakumar (P.W.5), has stated that, he found swelling in the forearm and so, he had the x-ray taken. Thus, the injuries spoken to by Dhanalakshmi (P.W.1) stood corroborated by the evidence of Dr.Sivakumar (P.W.5) adequately.

10. Mr.P.Ezhil Nilavan, learned counsel contended that there are discrepancies inter se the evidence of Pattammal (P.W.2) and Sivagami (P.W.3) and that they are interested witnesses. Pattammal (P.W.2) and Sivagami (P.W.3) were living nearby and when they heard the quarrel between Dhanalakshmi (P.W.1) and her husband, they came to her rescue. Just because, they are related to Dhanalakshmi (P.W.1), their evidence cannot be discarded.

11. Learned counsel contended that Pattammal (P.W.2) and Sivagami (P.W.3) have stated that they were also assaulted but, Dhanalakshmi (P.W.1) did not say so and so, there is contradiction in their evidence. It must be remembered that witnesses are not recording machines to give parrot like versions. That apart, there is no charge against the accused for assaulting Pattammal (P.W.2) or Sivagami (P.W.3). Even if this Court holds that Pattammal (P.W.2) and Sivagami (P.W.3) exaggerated, that will not vitiate the testimony of Dhanalakshmi (P.W.1), whose evidence stands corroborated by medical evidence.

12. Learned counsel further contended that the police have not recovered the stick, that was allegedly used by the petitioner to assault his wife and hence, the conviction and sentence under Section 324 IPC cannot be sustained. Had the police recovered the stick, it would have further corroborated the evidence of Dhanalakshmi (P.W.1). But, failure to disbelieve the evidence of Dhanalakshmi (P.W.1) that she was assaulted with a stick especially, in the light of the injuries sustained by her.

13. This Court also perused the evidence of the two defence witnesses, viz. Manonmani (D.W.1), mother of the petitioner and Shanmugam (D.W.2), neighbour of the petitioner. These two witnesses have stated that, there was no property dispute between the petitioner and his wife and further stated that no such incident had taken place as projected by the prosecution. In the cross-examination, serious dent has been made in their testimony and both the Courts have rightly disbelieved them. In fine, this Court does not find any infirmity in the findings of fact arrived at by the two Courts below warranting interference.

In the result, the judgment and order dated 10.07.2012 passed by the II Additional District and Sessions Judge, Salem in C.A.No.152 of 2010 is confirmed and this revision stands dismissed. The trial Court is directed to secure the petitioner to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CCC)

//True copy/

Sub Assistant Registrar

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To

- 1.The II Additional District and Sessions Judge, Salem.
- 2.The Judicial Magistrate No.II, Salem.
3. The Chief Judicial Magistrate,
Salem (For Information)
- 4.The Sub Inspector of Police,
Kichipalayam Police Station,
Salem.
5. The Public Prosecutor,
High Court of Madras.

Copy To
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.P.Ezhil Nilavan, Advocate SR.No.80424

SPD(CO)
GMY(25/10/2019)

CRL.R.C.No.1523 of 2012

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