

Bail Slip

Crl.R.C.No.405/2012:

The Petitioner namely Prabhakaran S/o. Thiruthuvadoss (Second Accused in Crl.A.No.47/2010 on the file of Court of Sessions, Cuddalore) was released on bail vide order of this Court dated 17.12.2012 and made in M.P. 1/2012 in Crl.R.C.No.405/2012.

Crl.R.C.No.429/2012:

The Petitioners namely 1. Ganesan S/o. Shanmugam 2.Shanmugam@Babu S/o. Arumuga Asari(1st and 2nd Accused in Criminal Appeal No. 48/2010 on the file of Court of Sessions, Cuddalore Division Cuddalore) were released on bail vide order of this Court dated 17.12.2012 and made in M.P. 1/2012 in Crl.R.C.No.429/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.Nos.405 and 429 of 2012
and
Crl.M.P.Nos.1 & 1 of 2012

Prabhakaran Petitioner/Appellant/2nd Accused
in Crl.RC.No.405 of 2019

1.Ganesan

2.Shanmugam @ Babu ... Petitioners/Appellants/Accused Nos. 1 & 3
in Crl.RC.No.429 of 2012

vs

State rep by,
Station House Officer,
Panruti Police Station,
Cuddalore District.

Crime No.678 of 1996 Respondent/Respondent/Complainant
in Both Crl.RCs.

Prayer in Crl.R.C.No.405 of 2012 Criminal Revision filed under Sections 397 r/w 401 of Code of Criminal Procedure, against the conviction under Section 397 IPC and sentencing him to 7 years

of Rigorous Imprisonment and fine of Rs.2,000/- in default of payment sentenced to one year rigorous Imprisonment by the learned Assistant Sessions Judge, Panruti in S.C.No.363 of 2009 by judgment dated 13.04.2010 and the same was confirmed by the Court of Sessions, Cuddalore Division, Cuddalore in Crl.A.No.47 of 2010 by a judgment dated 03.01.2012.

Prayer in Crl.R.C.No.429 of 2012 Criminal Revision filed under Sections 397 r/w 401 of Code of Criminal Procedure, against the conviction under Section 397 IPC and sentencing them to 7 years of Rigorous Imprisonment and fine of Rs.2,000/- in default of payment sentenced to one year rigorous Imprisonment by the learned Assistant Sessions Judge, Panruti in S.C.No.363 of 2009 by judgment dated 13.04.2010 and the same was confirmed by the Court of Sessions, Cuddalore Division, Cuddalore in Crl.A.No.48 of 2010 by a judgment dated 03.01.2012.

For Petitioner : Mr.S. Ashok Kumar SC for
Mr.M. Mohana Sundaram

For Respondent: Mr.T.Shanmugarajendran
Government Advocate (Crl.Side)

COMMON ORDER

The respondent police registered a case against the revision petitioners and two others for the offence under Section 395 r/w Section 397 IPC, in Crime No. 678 of 1996. After completing the investigation the respondent police laid a charge sheet before the learned Judicial Magistrate No.1, Panruti, the learned Judicial Magistrate No-1, Panruti taken the charge sheet on file in P.R.C.No.29 of 38, after the completion of the formalities since the offence is triable by the Court of Sessions, then the case was committed to the learned Principal District and Sessions Judge, Panruti. The learned Principal District and Sessions Judge, Panruti taken the case on file in S.C.No.363 of 2009 and made over the case to the learned Assistant Sessions Judge, Panruti, for disposal.

2 Though initially the case was registered against 5 persons since A4 and A5 have been absconded at the time of filing the charge sheet. Therefore, charge sheet filed against these revision petitioners and absconded charge sheet filed against the other two accused. After the trial, the learned Assistant Sessions Judge, Panruti, came to the conclusion that these revision petitioners have committed the offence under Section 397 IPC and sentencing them to 7 years Rigorous Imprisonment and fine of Rs.2,000/- in default of payment sentenced to undergo one year rigorous Imprisonment. Challenging the said judgment of the learned Assistant Sessions Judge,

Panruti, A1 and A3 have filed an appeal in CrI.A.No.48 of 2010 and A2 has filed an appeal in CrI.A.No.47 of 2010 before the learned Principal District and Sessions judge, Cuddalore. After hearing the arguments advanced on either side, the learned Principal District and Sessions Judge, Cuddalore, dismissed the appeal and confirmed the judgment of the learned Assistant Sessions Judge, Panruti in S.C.No.363 of 2009 dated 13.04.2010. Challenging the said judgment of the learned Principal District and Sessions Judge, Cuddalore, in CrI.A.No.47 and 48 of 2010 the convicts have filed present Criminal Revision cases before this Court.

3 The learned counsel for the petitioners would submit that there is no evidences to show that five persons were involved in this case and other two persons name have not been mentioned in the charge sheet filed by the respondent police and they have not been identified. Even the prosecution witnesses have not identified those persons in this case before the Court and even there in no identification parade conducted and identified the present revision petitioners. Therefore, once the prosecution has not established that five persons are involved in this case, the offence under Section 397 IPC is not attracted. In support of his contention, the learned counsel for the petitioner relied upon the judgments of the Hon'ble Supreme Court in the case of Manmeet Singh Alias Goldie Vs. State of Punjab reported in 2015 (7) SCC 167. none of the witnesses have spoken about the involvement of the revision petitioner, P.W.1 has stated that they identified only one person and the confession statement recorded by the Police Officer is not admissible in evidence. Both the Courts below have failed to consider the legal proposition and dismissed the appeal by convicting the accused which warrants interference of this Court.

4 The learned Government Advocate (Criminal Side) appearing for the respondent would submit that there are five persons involved in this case, the charge sheet also filed only two persons were not secured. Therefore, the case was split up against two persons. The case was tried against these revision petitioners P.W.1 and P.W.2 are the injured witnesses and they have clearly spoken about the involvement of the revision petitioners. They produced before the police station subsequently, they have given the confession statement. Based on the confession statement the respondent police arrested these revision petitioners and two other persons were absconded. They have filed a charge sheet against only two absconded persons. P.W.1 is the injured witnesses P.W.2, P.W.3 and P.W.4 have clearly stated about the incident. P.W.1 evidence was corroborated by P.W.2 injured witnesses have admitted in the hospital on the same date and the entry of the AR copy also shown to that effect. In order to substantiate the case even

P.W.1 who is the complainant in this case has clearly narrated the evidence, P.W.2 and P.W.4 are corroborated the evidence of P.W.1. Therefore, the prosecution proved its case beyond reasonable doubt. Both the Courts have rightly appreciated the evidence, there is no need to interfere by this Court.

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

6 The case of the prosecution is that on 19.08.1996 at about 08.00 p.m., the petitioners herein and the other accused in split up case jointly committed robbery of Rs.60,000/- from the cycle carrier of witness Duraisamy by the accused 2 to 5 and the 3rd accused assaulted him with Iron Pipe on his right hand ring finger and caused grievous injuries and all the petitioners and other accused assaulted witness Palanivel with iron pipe on his head and caused injuries. After investigation, the prosecution laid the charge sheet against the revision petitioners for the offence under Section 395 r/w Section 397 of IPC.

7 Before the trial Court, in order to prove the case, the prosecution has examined P.W.1 to P.W.15 and marked Ex.P1 to Ex.P12 and also marked M.Os.1 to 6. On the side of the accused Ex.D1 was marked but no oral evidence was adduced.

8 P.W.1 is the occurrence witness and he is the eye witness and also he is the injured witness. Therefore, the evidence of P.W.1 cannot be discard and immediately soon after the occurrence he was admitted in the hospital and entry made in the Accident Register. P.W.10 has clearly stated about that on 19.08.1996 at about 11.55p.m., P.W.1 was admitted in the hospital and he has stated that three unknown persons attacked him and also spoken about the injuries sustained by him. Further, he has stated that the injuries are grievous in nature. Therefore, the evidence of P.W.1 and P.W.2 the injured witnesses and also P.W.10 Doctor one who attended P.W.1 and P.W.2 in the hospital and give first aid to them and also made entry in the Accident Register. After hearing the noise they came to the spot, at that time, they saw the accused. P.W.2 and P.W.3 corroborated the evidence of P.W.1 though five persons involved in this case as stated by the learned counsel for the revision petitioners, the confession statement recorded by the Police Office is admissible in evidence so far as the recovery is concerned. The occurrence have taken place in the year of 1996 and the charge sheet was filed in the year of 2009. Then the examination was done in the year of 2010, after 4 years the accused were not identified in the court, it cannot be the reason for discarding the evidence of P.W.2 and P.W.3 the

injured witnesses.

9 However, on reading of the evidence of P.W.1 he has clearly narrated the events and also he identified two petitioners, P.W.2 has also clearly stated about the incident and also the injuries. The learned Principal District and Sessions Judge, has rightly appreciated the material evidence placed before it and the learned Assistant Sessions Judge, has also given a reason for convicting these petitioners, the scope of these revisions are very limit. Since this Court is a revisional Court, while exercising the revisional jurisdiction, this Court need not sit in the armchair of the appellate Court and revisit the entire evidence. However, this Court has to see as to whether there is any perversity in the appreciation of evidence while deciding the case by the Courts below.

10 On reading of the entire evidences, the evidence of P.W.1 and P.W.2 the injured witnesses and the Doctor and also the evidence of P.W.3 and P.W.4 and the judgment of both the Courts below, this Court does not find any perversity in the findings. Under these circumstances, there is no merit in the revisions and there is no sound reason and ground to interfere with the judgment of both the Courts below. Hence, both the Criminal Revision Cases are dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

sbn

To

- 1.The Judicial Magistrate No.I, Panruti
- 2.Do Thro The Chief Judicial Magistrate, Cuddalore
3. The Assistant Sessions Judge,
Panruti.
- 4.The Principal District and Sessions Judge,
Cuddalore.

5.The Station House officer
Panruti Police Station
Cuddalore

6.The Superintendent, Central Prison, Cuddalore

7.The District Collector
Cuddalore

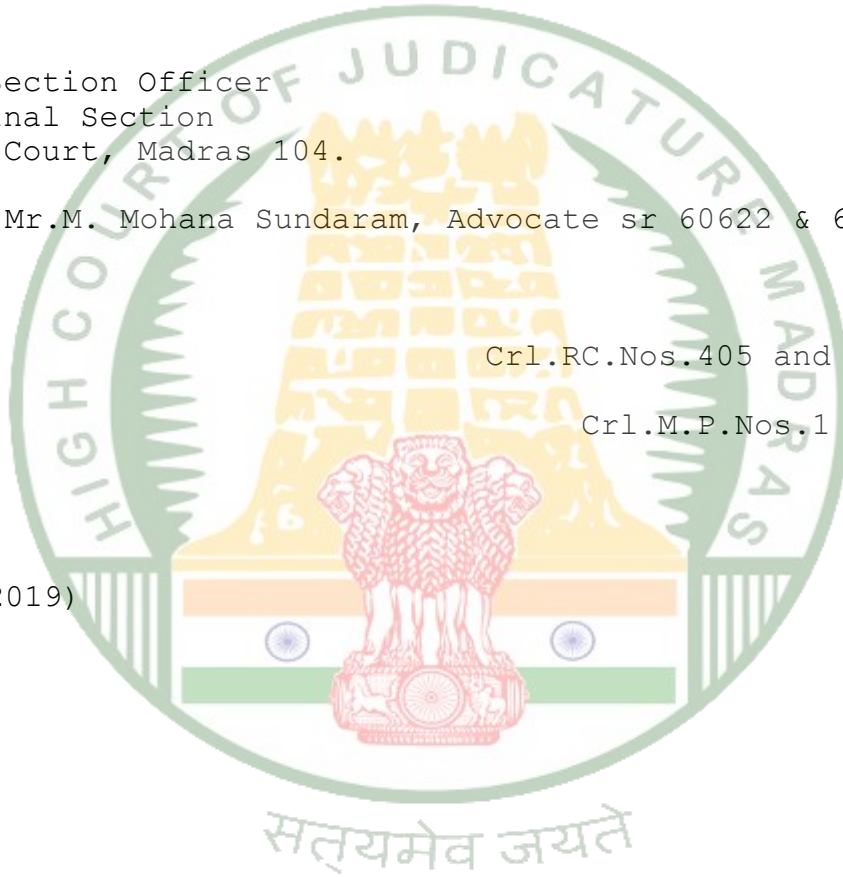
8. The Public Prosecutor,
High Court, Madras.

Copy to
The Section Officer
Criminal Section
High Court, Madras 104.

+2 Ccs to Mr.M. Mohana Sundaram, Advocate sr 60622 & 60623.

Crl.RC.Nos.405 and 429 of 2012
and
Crl.M.P.Nos.1 & 1 of 2012

GJ(CO)
SP(27/11/2019)



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