

BAIL SLIP

The Petitioner herein/Accused namely Thommai Thaiu George, was directed to be released on bail as per the Order of this Court dated 26.04.2012 in M.P.No. 1 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.03.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.R.C.No.488 of 2012

Thommai Thaiu George ... Petitioner/Accused

Vs.

State rep.by
The Inspector of Police,
Salavakkam Police Station,
Kancheepuram District. Respondent/Complainant

Prayer: Criminal Revision Case has been filed under Section 397 (1) r/w 401 of Cr.P.C. against the Judgment of Principal District Sessions Judge No.II, Kancheepuram in C.A.No.36 of 2011, dated 29.03.2012 confirming the Judgment of the District Munsif-cum-Judicial Magistrate, Uthiramerur in C.C.No.38 of 2007, dated 12.10.2011 convicting the petitioner for the offence under Sections 279, 338 and 304(A) of IPC and sentencing the petitioner to undergo one year Simple Imprisonment for offence under Section 304(A) IPC and six months Simple Imprisonment under Sections 279 and 338 of IPC.

For Petitioner : Mr.Manoj Sreevalsan

For Respondent : Mrs.P.Kritika Kamal
Government Advocate

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O R D E R

This revision petition is filed against the concurrent finding of the Courts below holding the revision petitioner guilty of offence under Sections 279, 338 and 304(A) of the Indian Penal Code.

2. The facts of the case is that on 15.11.2006 at about 10.00 p.m, near Kumaravadi Erikkarai, a Tata Indica Car

bearing Registration No.TN-69-J-2932 driven by the revision petitioner herein dashed against a Hero Honda Splendor bearing Registration No.TN-29-B-1015. The two wheeler was driven by one Barnabas and his brother Jayaraj was on the pillion. Due to the impact both Barnabas and Jayaraj were thrown out from the vehicle. Jayaraj sustained fatal injuries. Whereas Barnabas' legs were fractured. Barnabas was taken to the hospital. After treatment, he survived, but his right leg was amputated. After getting Motor Vehicle Inspector's report, the prosecution has laid the final report.

3. To prove the charges, the prosecution has examined 15 witnesses and 10 exhibits were marked. The crucial witness for the prosecution is PW3 [Barnabas] who is one of the injured person in the said road accident. He was driving the two wheeler at the time of accident.

4. According to him, the revision petitioner was driving his car in a very high speed with high beam light and hit the two wheeler. The rest of the witnesses are the relatives of the victim. They heard about the accident and went to the spot and shifted the injured persons to the hospital. The Courts below, relying upon their evidences, have concluded that the accused had driven the vehicle rash and negligently and caused the death of Jayaraj and grievously injured Barnabas.

5. The learned counsel appearing for the revision petitioner/accused would submit that none of the witnesses for the prosecution has alleged that the accused has driven the car rash and negligently. Driving the vehicle in a high speed, per se, will not lead to the interference that it was driven rash and negligently. The Motor Vehicle Inspector admits that the investigating officer has not produced the driving license or insurance of the two wheeler. The inspection of the vehicle was conducted after a long delay of the accident. The scene of the accident, as found in the sketch, could indicate that the accused could not have driven his car rash and negligently while negotiating the curve. Since there is a lack of evidence to prove rash or negligence, the Courts below ought to have acquitted him. The Courts below have not applied the dicta of the High Court rendered in Sekar Vs. State by Sub Inspector of Police, Ethapur, Salem District reported in 2001(2)MWN (Cr) Page 240.

6. Per contra, the learned Government Advocate appearing for the respondent State would submit that the accident occurred on 15.11.2006 at about 10.30 p.m. The nature of injury sustained by the deceased Jayaraj as well as PW3 [Barnabas] and the extensive damage caused to the two wheeler will clearly indicate that it was due to rash and negligent

driving of the revision petitioner. The said road accident has occurred in a curve. The accused should have driven the vehicle diligently anticipating vehicles on the other side, which he has failed to observe. The extensive damage found in the two wheeler, as per the motor vehicle Inspector's report, (Exs.P4 and P5) would show that the impact was due to high speed and without control over the steering.

7. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the State and perused the records.

8. The injured victim [PW3] alone is the eye witness for the occurrence. He has deposed that the offending vehicle was coming in a very high speed and with high beam light, disturbing his vision. He shouted at the car driver. However, he hit him and put him out of balance. The motor vehicles Inspector's report indicates that it was a head-on collision.

9. The learned counsel appearing for the petitioner/accused points out that admittedly, PW3 had not produced his driving licence. In his deposition he admits that the vehicle belongs to his friend and it is not his vehicle. He also admits that at the time of examining him, his driving licence has lapsed, coupled with the fact that on seeing the four wheeler coming on the other side in a high speed and high beam light, instead of stopping his vehicle and avoiding the collision, he has shouted at the car driver. This only shows that the offending vehicle was coming in a high speed, PW3 instead of avoiding the accident, had invited the accident. When there is no evidence to show that the accused was driving the car in a rash and negligent manner, mere driving in high speed alone cannot be a reason to hold the accused guilty of offence U/s 279 of IPC or 304 (A) of IPC.

10. The Courts below have not considered properly the scene of accident and the sole evidence to the accident. They had erroneously held the accused guilty, without adequate proof for rash and negligent driving. Therefore this Court set aside the erroneous finding of the Courts below.

11. Accordingly, the Criminal Revision Case is allowed. The petitioner/accused is acquitted of the charges. The fine amount, if any paid by the accused shall be refunded to him. Bail bond if any executed by him shall stand discharged.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Sessions Judge No.II,
Kancheepuram.

2.The District Munsif cum Judicial Magistrate,
Uthiramerur.

3.The Chief Judicial Magistrate,
(Chengalpatt (For Information)

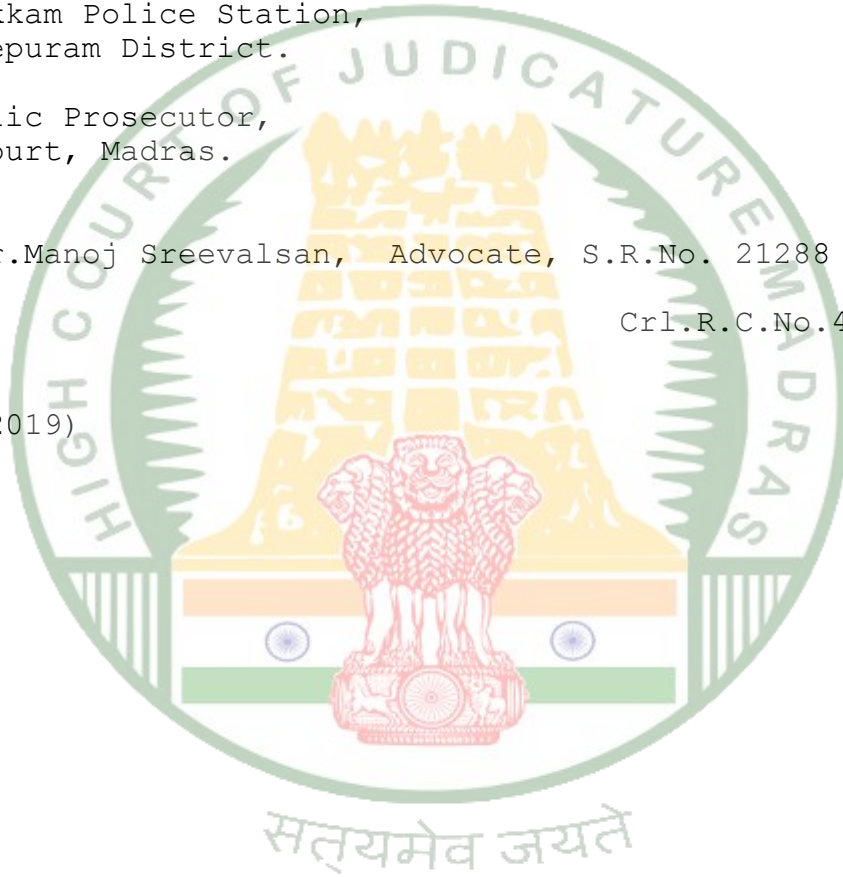
4.The Inspector of Police,
Salavakkam Police Station,
Kancheepuram District.

5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Manoj Sreevalsan, Advocate, S.R.No. 21288

Crl.R.C.No.488 of 2012

RJI (CO)
GN(04/04/2019)



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