

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.Rc.No.159 of 2016

Panneerselvam @ Panneer

...Petitioner/Appellant/Accused

.Vs.

State: rep. by Inspector of Police,
H-4, Korukkupettai Police Station,
Chennai-600 021.
Crime No.240 of 2007.

...Respondent/Respondent
/Complainant

Prayer: Criminal Revision Petition filed under Sections 397 r/w. 401 CrPC against the judgment dated 06.03.2015 made in C.A.No.239 of 2011 passed by the learned IV Additional Sessions Judge, Chennai by dismissing the appeal, confirming the conviction and sentence made in C.C.No.9608 of 2007 imposed by the learned XV Metropolitan Magistrate, George Town, Chennai, vide judgment dated 02.11.2011.

For Petitioner : Mr.P.Palaninathan

For Respondent : Mr.Krithika Kamal.P.
Government Advocate (Crl.side)

ORDER

It is the case of the prosecution that the accused was employed as Driver in Vignesh Travels and Kamlesh Service Centre run by Pandiaraj (PW1). After he ceased his employment with him, on 05.06.2007, the accused trespassed into the premises of the company and took away a Toyota Qualis Vehicle bearing Reg.No.TN04-U-8523.

2. On the complaint (Ex.P1) lodged by PW1, the police registered a case in Crime No.240 of 2007 and after completing the investigation, filed final report in C.C.No.9608 of 2007 before the XV Metropolitan Magistrate Court, George Town, Chennai against the accused. The Trial Court framed charges under Sections 457 and 380 I.P.C. against the accused and when questioned, he pleaded not guilty.

3. To prove the case, the prosecution examined 7 witnesses and marked 7 exhibits. After considering the evidence on record and hearing either side, the Trial Court, vide judgment dated 02.11.2011 in C.C.No.9608 of 2007, convicted and sentenced the accused as under:

Conviction	Sentence
Under Section 457 I.P.C.	2 years Rigorous Imprisonment with a fine of Rs.1,000/- in default to undergo 2 months Rigorous Imprisonment
Under Section 380 I.P.C.	2 years Rigorous Imprisonment with a fine of Rs.1,000/- in default to undergo 2 months Rigorous Imprisonment

4. Challenging the conviction and sentence passed by the Trial Court, the accused filed C.A.No.239 of 2011, which came to be dismissed by the learned IV Additional District and Sessions Judge, Chennai, vide judgment dated 06.03.2015. Challenging the orders passed by the Trial Court and the Appellate Court, the accused has filed the present revision petition and in Crl.M.P.No.1014 of 2016, this Court has suspended the sentence and released the petitioner on bail on 26.02.2016.

5. Today, when the matter was taken up for hearing, the learned counsel for the petitioner/accused submitted that the accused died on 27.09.2017 and submitted a photocopy of the Death Certificate of the petitioner. None of the relatives of the petitioner has come forward to prosecute the revision petition. Death of the accused by itself will not automatically lead to abatement of the revision petition and therefore, this Court carefully perused the records in order to find out if there are any infirmity or illegality in the orders passed by the Courts below.

6. Before advertng to the rival submissions, it may be necessary to state here that, 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.”

7. Pandiaraj (PW1) has stated that he is running tourist taxis with 5 cars and 5 drivers at No.6/0, Ilayamudali Street ; he would park his vehicles / cars in the shed located near his office ; he knows the accused, who worked under him some years back for a period of 8 months and thereafter, left the job ; 2

or 3 months prior to the incident, the accused approached him and asked him for a job ; he permitted the accused to sleep in the shed ; he found that the driving licence of the accused had expired ; so the accused stated that he will go to his native place and have the licence renewed ; Saying so, the accused left his office ; on 04.06.2007, he (PW1) went to Madurai for some work ; on 06.06.2007, his brother Tamilselvan called PW1 at 10.00 a.m and informed that the vehicle bearing Reg.No.TN04-U-8523 was missing and that when he made enquiry, the drivers told him that they had not taken the cars ; so he returned to Chennai on 10.06.2007 and lodged the complaint (Ex.P1) ; on 11.06.2007, the police arrested the accused and recovered the vehicle ; thereafter, he filed an application under Section 451 CrPC to take back the car, which was allowed by the Court.

8. The defence was not able to make any serious dent in the cross examination of PW1. The evidence of PW1 was corroborated by the evidence of his brother Tamilselvan (PW2). The Investigating Officer, in his evidence, has stated that he arrested the accused and recovered the car pursuant to the confession statement of the accused.

9. In the light of such overwhelming evidence against the accused, it cannot be stated that the Courts below have committed any illegality or impropriety, warranting interference by this Court.

10. In the result, this Criminal Revision Petition is devoid of merits and accordingly, dismissed. The custody of the car [Toyota Qualis bearing Reg.No.TN04-U-8523] is ordered to be returned to Pandiaraj [PW1] under Section 452 CrPC.

Jvm

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

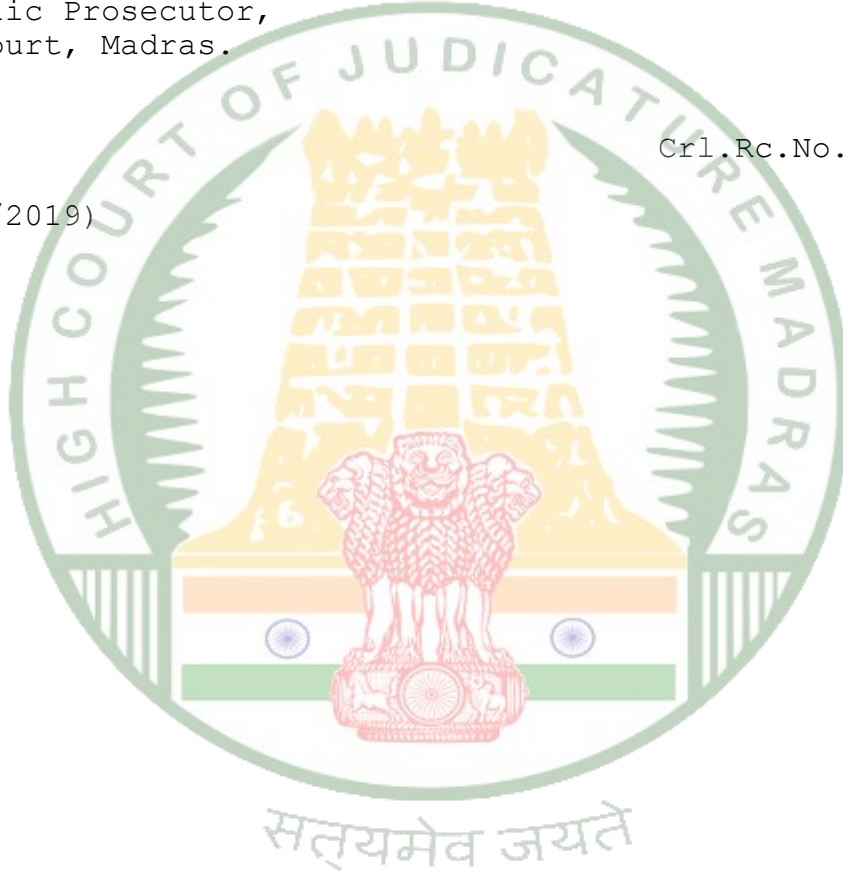
To

1. The IV Additional Sessions Judge,
Chennai.
2. -Do- Thro' The Principal Sessions Judge,
Chennai.

3. The XV Metropolitan Magistrate,
George Town, Chennai.
4. - Do - Thro' The Chief Judicial Magistrate
Chennai - 8.
5. The Inspector of Police,
H-4, Korukkupettai Police Station,
Chennai-600 021.
[Crime No.240 of 2007.]
- 6.The Public Prosecutor,
High Court, Madras.

Crl.Rc.No.159 of 2016

Kak(20/08/2019)



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