

Bail Slip

The Appellant in CRL.R.C.No.235 of 2016 namely Sudhakar S/o.Perumal, aged 28 Years was directed to be released on bail as per order of this court dated 12.02.2016 and made in CRL MP.NO.1603/16 IN CRL.R.C.No.235 of 2016 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.R.C.No.235 of 2016

Sudhakar ... Petitioner/A1

Vs.

1.State, rep., by
The Sub-Inspector of Police,
Thirupathur Taluk Police Station,
Vellore District.1ST Respondent/Complainant

2.V.Shanthi
3.G.Vadivel
4.A.Vanaja

... Respondents2 TO 4

(R2 to R4 are impleaded as per the order of this court, by order dated 06.11.2019, in Crl.M.P.No.15888/2019 in Crl.R.C.No.235/2016)

PRAYER: This Criminal Revision Petition has been filed, under Sections 397 and 401 of Cr.P.C., to call for the records and set aside the judgment dated 07.01.2016, made in Crl.A.No.11/2014, by the I Additional District and Sessions Judge, Vellore, confirming the judgment dated 24.01.2014, made in C.C.No.105/2013, by the Judicial Magistrate No.II, Tirupatur.

For Petitioner : Mr.I.Abrar MD Abdullah
For Respondent : Mr.M.Mohamed Riyaz, APP, For R1
: Mr.C.Gunasekaran, For R2 to R4
appointed as Legal Aid counsel.

ORDER

- 1.This Criminal Revision Petition has been filed by the petitioner/accused, against the order, dated 07.01.2016, made in CrI.A.No.11/2014, by the I Additional District and Sessions Judge, Vellore, confirming the judgment dated 24.01.2014, made in C.C.No.105/2013, by the Judicial Magistrate No.II, Thirupattur.
- 2.The facts in the case of the Prosecution is that the Inspector of Police, Thirupattur Taluk Police Station had filed a final report, against the accused is that on 09.02.2010, at about 6.45 p.m., in Kizhkuppam Village, Thirupattur Taluk, while the witness Santhi/P.W.2, was sitting in a house and the witnesses one Vadivelu/P.W.2, and Vanaja/P.W.3 were inside the room, the petitioner/A1 trespassed into the room of witness Vadivelu/P.W.2 and abused him in filthy language and assaulted him with iron rod on his left hand, left and right shoulder and caused grievous injury on his left hand and when it was prevented by the witnesses Santhi/P.W.1 and Vanaja/P.W.3, the petitioner/A1 voluntarily assaulted with iron rod and caused injuries to them and 2nd accused assaulted the witness Vadivelu/P.W.2 on his back and 3rd accused assaulted the witness Santhi/P.W.1 on her back and caused simple injuries. In the same transaction, the 1st accused criminally intimidated the above witnesses by showing the iron rod and also caused damages to the Yamaha Two wheeler belonging to the witness Vadivelu/P.W.2, to the tune of Rs.180/-. The respondent police, after completing the investigation, filed a final report, against the petitioner/A1 for the offences under Sections 452, 294(b), 326, 324, 427 and 506(ii) of IPC and against the 2nd and 3rd accused for the offence under Section 323 of IPC. Taking cognizance, the Trial Court summoned the accused persons to furnish the copies under Section 207 of Cr.P.C., and questioned about the offence. The accused denied the offence and sought to be tried and charges for the offence under Sections 452, 294(b), 326, 324 (2 counts), 427 and 506 (ii) of IPC were framed against the 1st accused and charges for the offences under Section 326 read with 34 and Section 323 of IPC were framed against 2nd and 3rd accused. On the side of the prosecution witnesses P.W.1 to P.W.13 were examined and Exs.P.1 to P14 were marked and M.Os.1 and 2 were marked. After examination of witnesses, the accused were questioned under Section 313 (1) (b) of Cr.P.C., the accused denied the evidence stating that a false case has been foisted on them and on the side of the defence Exs.D.1 to D.3 were marked and that no oral evidence were marked.
- 3.The Trial Court, after hearing both sides , found the petitioner/A1 guilty for the offences under Sections 326 and 324 (2 counts) of IPC and convicted and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/-, in default to undergo six months simple

imprisonment for the offence under Section 326 of IPC and to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment for each count for the offence under Section 324 (2 counts) of IPC and 2nd and 3rd accused were found not guilty for the offence under Section 326 read with 34 and 323 of IPC and the Trial Court had acquitted then under Section 248 (1) of Cr.P.C. Against the judgment of conviction and sentence, the petitioner/A1 preferred the CrI.A.No.11/2014 and the Lower Appellate Court dismissed the appeal and confirmed the conviction and sentence passed by the Trial Court. Against which, the present criminal revision petition has been filed.

4. The learned counsel for the petitioner, at the outset would submit that the petitioner and the victim are close relatives and that the incident had happened due to a family dispute and that P.W.1 is the wife of P.W.2 and P.W.3 is the sister-in-law of P.W.2 and that the father of the petitioner and the father of P.W.2 are brothers and as such the petitioner and P.W.2 are first cousins living in nearby houses and that the incident had happened during the sudden quarrel and that there was no pre-meditation and would submit that the petitioner and the victim/de-facto complainant have resolved the issue amicably between them due to intervention of well wishers and senior members in the family and that they are presently living in peace in the same village in nearby houses. He would further submit that the injured witnesses P.Ws.1, 2 and 3 have also entered appearance before this Court and they have filed necessary petition seeking to be implead them as proposed parties and in view of the compromise and settlement have also filed a petition, seeking to accept the compromise entered between the parties and compound the offences. He would further submit that though the offences for which, the petitioner has been convicted are not compoundable in nature, would seek the leave of this Court, to take into consideration, the compromise arrived at between the parties and would seek to reduce the sentence imposed in the petitioner. In support of his contention, the learned counsel for the petitioner would rely on the judgment of the Hon'ble Apex Court reported in (2008) 15 Supreme Court Cases 667, [Ishwar Singh v. State of Mahdya Pradesh] and (2019) 5 Supreme Court Cases 166, [Shankar and Others v. State of Maharashtra and Another].
5. The injured witnesses P.Ws.1 to 3 have entered appearance through their counsel and filed a petition seeking to implead them as a necessary parties and to permit them to compound the offences.
6. The learned counsel for P.Ws.1 to 3 would submit that the petitioner and the witnesses are close relatives and that pursuant to the conviction, due to intervention of elders and well wishers in the family, the dispute between the parties have been amicably resolved and the parties are living in peace

in the same area and would submit that it is an unfortunate incident that had happened due to property dispute and that the petitioner has expressed his remorse and the witnesses/victims have also understood the petitioner and that they have pardoned him and they are living peacefully in the neighbouring house.

7. The learned Additional Public Prosecutor would submit that the petitioner has been convicted for non compoundable offences and that compounding cannot be permitted.
8. In (2008) 15 Supreme Court Cases 667, reported in Ishwar Singh v. State of Madhya Pradesh, the Hon'ble Apex Court has held that:

"6. The order of conviction and sentence was challenged by accused 1-appellant herein by filing Criminal Appeal No.817/1994. The High Court of Madhya Pradesh (Indore Bench) again considered the evidence on record and the findings recorded by the Trial Court and held that no error either of fact or of law had been committed by the Trial Court and the order of conviction recorded by the Trial Court was in consonance with law. Regarding sentence also, the High Court held that it could not be said that the sentence awarded to the appellant was excessive or harsh. Accordingly, the appeal was dismissed. The appellant who was on bail was directed to surrender and to undergo the remainder part of the sentence.

7. The said order is challenged in the present appeal. On 15.01.2008, notice was issued by this Court. On 13.08.2008 at the oral prayer of learned counsel for the appellant, injured Devi Singh was ordered to be joined as party-Respondent 2 and notice was issued to him by making it returnable within two weeks. The notice was served and the injured appeared through a lawyer.

8. We have heard learned counsel for the parties.

9. The learned counsel for the appellant stated that during the pendency of the proceedings before this Court, mutual compromise has been arrived between the parties i.e., accused Ishwar Singh on the one hand and the complainant victim Devi Singh on the other hand.

10. An affidavit is also filed by the appellant-accused 1 in this Court. In para 3, it is stated:

"The petitioner-accused and the complainant Devi Singh are members of the same community and reside permanently in the same village and are also related to each other. Now the relations between the accused and the complainant and their families are cordial and there is no surviving dispute of any kind between the parties. Father of the accused, Shankarlalji is the uncle of the complainant. He is very old and due to old age he needs to be looked after by his son i.e., accused Ishwar Singh. If Ishwar Singh is released from jail in view of the cordial relations between the parties, both the families would be able to live together peacefully without any ill will. It was, therefore, jointly prayed on behalf of the parties that the appellant may be released by treating the sentence already undergone by the appellant-accused as sufficient.""

9. In (2019) 5 Supreme Court Cases 166, reported in Shankar and Others v. State of Maharashtra and Another, the Hon'ble Apex Court has held that:

"10. In Ishwar Singh v. State of M.P., this Court held that in a non-compoundable offence the compromise between the parties is a relevant factor to be taken into consideration in considering the quantum of sentence. In paras 13 and 14 of Ishwar Singh it was held as under:

"13. In Jetha Ram v. State of Rajasthan, Mjrugesan v. Ganapathy Velar and Ishwarlal v. State of M.P., this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in Mahesh Chand v. State of Rajasthan such offence was ordered to be compounded.

14. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the Court may keep in mind.""

10. In so far as, the conviction, the petitioner has been found guilty and convicted for the offence under Sections 326 and 324

of IPC. The offence under Section 326 of IPC is not compoundable. It would not be appropriate for this Court to compound the offences which are not compoundable under the statutory provisions. However, taking into consideration, the relationship of the parties and the factum of compromise between the parties and that they are living in the neighbouring houses peacefully which is a relevant and mitigating circumstance, this Court is of the opinion, the sentence of imprisonment imposed can be modified to the period already undergone by them in the interest of justice.

11.I have gone through the materials placed on record, the courts below have taking into consideration, the evidence on record have rightly convicted the petitioner/accused. In this case, pursuant to the conviction, the petitioner and the witnesses being close relatives and members of the same family, have compromised the matter and the parties have been living in the neighbouring house peacefully without any dispute. P.W.2 and P.W.3 have appeared before this Court and P.W.1 is the wife of P.W.2. The parties have also filed necessary affidavits submitting that the dispute between them have been amicably settled and that they are living in neighbouring houses.

12.In view of the above, the Criminal Revision is partly allowed. While confirming the conviction and payment of fine passed by the Courts below, the sentence of imprisonment alone is modified to the period already undergone by the petitioner. The bail bond if any executed by the petitioner, shall stand cancelled.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssi

To:

1.The I Additional District and Sessions Judge, Vellore,

2. The Judicial Magistrate No.II, Tirupatur.

3. The Sub-Inspector of Police,
Thirupathur Taluk Police Station, Vellore District.

4. The Public Prosecutor, High Court, Chennai.

5. Do thro the Chief Judicial Magistrate,Vellore District

+lcc to Mr.I.Abrar Md.Abdullah , Advocate SR.No. 92710

CrI.RC.No.235 of 2016

A.SK(07/08/2020)