

BAIL SLIP

The Appellant/Petitioner/Accused namely Annadurai was directed to be released on bail as per the order of this court dated 19/01/2016 in Crl.Mp.No. 464 of 2016 in Crl.Rc.No.72 of 2016 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.06.2019

DELIVERED ON: 02.07.2019

CORAM:

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

Crl.R.C. No.72 of 2016

Annadurai

Petitioner /Appellant/Accused

vs.

State represented by
the Inspector of Police
Kayarlabath Police Station
Ariyalur District
Cr. No.148 of 2011

Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to set aside the judgment dated 17.04.2015 passed in Crl.A. No.6 of 2014 on the file of the Additional District and Sessions Judge and Chief Judicial Magistrate, Ariyalur, partly confirming the judgment dated 03.04.2014 in C.C. No.13 of 2003 on the file of the Judicial Magistrate Court, Ariyalur.

For petitioner Mr. K. Gandhi Kumar

For respondent Mrs. P. Kritika Kamal
Govt. Advocate (Crl.Side)

ORDER

This criminal revision has been filed seeking to set aside the judgment dated 17.04.2015 passed in Crl.A. No.6 of 2014 on the file of the Additional District and Sessions Judge and Chief Judicial Magistrate, Ariyalur, partly confirming the judgment dated 03.04.2014 in C.C. No.13 of 2003 on the file of the Judicial Magistrate Court, Ariyalur.

2 Succinctly stated, the facts leading to the filing of this criminal revision are as under:

2.1 Shanthi (P.W.1) is the daughter of Kamalam (P.W.2). Annadurai, the petitioner/accused and Amar Singh (P.W.3) are the neighbours of the mother-daughter duo. All the four hail from Hasthinapuram Village in Ariyalur District.

2.2 On 05.11.2011, around 3.30 p.m., there was downpour in the village. Shanthi (P.W.1) and Kamalam (P.W.2) had stacked firewood near their house in such a way that it obstructed the free flow of rain water and flooded the house of the petitioner. Irked at that, the petitioner forcibly removed the obstruction and when it was questioned by Shanthi (P.W.1) and Kamalam (P.W.2), the petitioner attacked Shanthi (P.W.1) with a billhook resulting in injuries to her.

2.3 Shanthi (P.W.1) was rushed to the Government Hospital, Ariyalur, where, she was examined by Dr. Kanchana (P.W.4) at 5.30 p.m. on 05.11.2011 and the following injuries were noted:

- An incised wound measuring 2 cms. on the right shoulder
- An incised wound measuring 2 cms. x 1 cm. on the right wrist
- An incised wound measuring 2 cms. x 1 cm. on the left index finger

On x-ray being taken, no fracture was noticed. She was admitted as in-patient for treatment. The copy of the accident register was marked as Ex.P.2. When she was under treatment, her statement (Ex.P.1) was recorded, based on which, the respondent police registered a case in Cr.No.148 of 2011 under Sections 294 (b), 324 and 506(II) IPC on 06.11.2011 at 5.30 p.m. and prepared the printed FIR (Ex.P.3).

2.4 The Investigating Officer went to the place of occurrence and prepared the observation mahazar (Ex.P.4) and rough sketch (Ex.P.5) and after completing the investigation, filed final report in C.C. No.13 of 2003 before the Judicial Magistrate, Ariyalur against the petitioner for the offences under Sections 294(b), 324 and 506(II) IPC.

2.5 On the appearance of the petitioner, the provisions of Section 207 Cr.P.C. were complied with. Charges were framed against the petitioner for the aforesaid offences and when questioned, he pleaded not guilty.

2.6 To prove its case, the prosecution examined five witnesses and marked five documents.

2.7 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, no witness was examined nor any document marked.

2.8 After considering the evidence on record and hearing the learned counsel on either side, the Trial Court, vide judgment dated 03.04.2014 in C.C. No.13 of 2013, convicted and sentenced the petitioner as under:

S.No.	Provision under which convicted	Sentence
1	294(b) IPC	1 month simple imprisonment
2	324 IPC	6 months simple imprisonment
3	506(II) IPC	6 months simple imprisonment

2.9 The aforesaid sentences were ordered to run concurrently. Challenging the aforesaid conviction and sentence, the petitioner preferred CrI.A. No.6 of 2014 which was heard by the Additional District and Sessions Judge, Ariyalur, who, vide judgment dated 17.04.2015, confirmed the conviction and sentence qua the offences under Sections 294(b) and 324 IPC, however, acquitted the petitioner of the offence under Section 506(II) IPC. Challenging the conviction and sentence slapped by the Courts below, the accused is before this Court.

3 Heard Mr. K. Gandhi Kumar, learned counsel for the petitioner and Mrs. P. Kritika Kamal, learned Government Advocate appearing for the respondent/State.

4 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.¹:

¹ (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."

5 The learned counsel for the petitioner contended that the whole incident had taken place because Shanthi (P.W.1) and Kamalam (P.W.2) had stacked firewood nearby their house in such

a way that it obstructed the free flow of rain water resulting in the petitioner's house getting inundated. He further contended that Shanthi (P.W.1), in her evidence, has stated that the petitioner came with a billhook to attack her mother Kamalam (P.W.2) and that when she (Shanthi - P.W.1) interceded, he attacked her (Shanthi-P.W.1). Whereas, Kamalam (P.W.2) has stated that the petitioner brought a billhook and attacked Shanthi (P.W.1) straightaway and has not stated that he first came to attack her (Kamalam-P.W.2) but attacked Shanthi (P.W.1) since she (Shanthi-P.W.1) interceded.

6 In the opinion of this Court, the aforesaid discrepancy in the version of Shanthi (P.W.1) and Kamalam (P.W.2) cannot be said to be a contradiction so as to completely disbelieve both their testimonies. The fact remains that Shanthi (P.W.1) was attacked by the petitioner. She suffered three incised injuries and was immediately rushed to the hospital. Her evidence relating to the injury sustained by her stood corroborated by the evidence of Dr. Kanchana (P.W.4). That apart, Amar Singh (P.W.3), who is an eyewitness to the incident, has spoken to about the attack of the petitioner on Shanthi (P.W.1).

7 In the light of such overwhelming evidence against the petitioner, this Court finds no material to infer that the Trial Court and the appellate Court had committed grave illegality warranting interference by this Court in revision.

8 Hence, the conviction of the petitioner for the offences under Sections 294(b) and 324 IPC stands confirmed. However, taking into consideration the fact that the petitioner on the one hand and Shanthi (P.W.1) and Kamalam (P.W.2) on the other, are neighbours, the sentence of six months simple imprisonment slapped on the petitioner for the offence under Section 324 IPC is reduced to four months simple imprisonment. Needless to state, the petitioner would be entitled to set off under Section 428 Cr.P.C.

With the above modification in sentence, this criminal revision stands dismissed. The Trial Court is directed to secure the presence of the petitioner and commit him to prison to undergo the period of sentence.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

cad

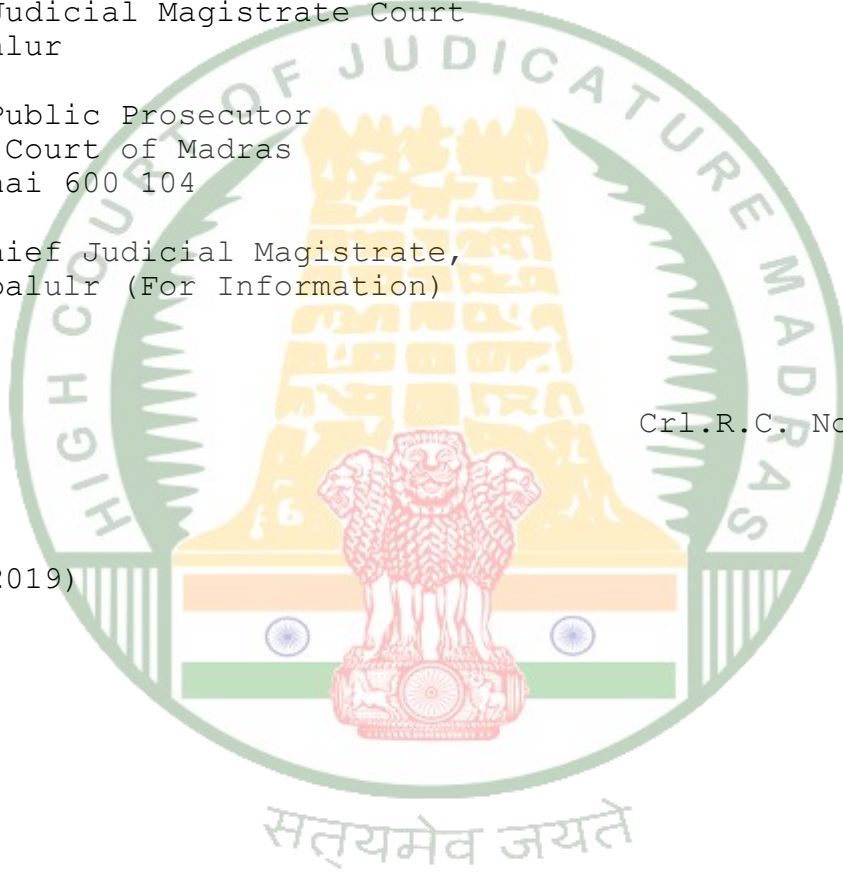
To

- 1 The Inspector of Police
Kayarlabath Police Station
Ariyalur District
- 2 The Additional District and Sessions Judge
and Chief Judicial Magistrate
Ariyalur
- 3 The Judicial Magistrate Court
Ariyalur
- 4 The Public Prosecutor
High Court of Madras
Chennai 600 104
- 5 The Chief Judicial Magistrate,
Perambalur (For Information)

CrI.R.C. No.72 of 2016

VBA (CO)

GN (26/07/2019)



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