

Bail Slip

The Appellant/Accused, namely R.Samuel S/o.Raja Gopal Accused in CRL A 107/2010 by Judgment dated 19.03.2014 passed by the II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District confirming the Judgment passed by the Judicial Magistrate No.I, Walajapet, Vellore District made in C.C.No.181 of 2007 dated 03.05.2010 was enlarged a Bail by this Court order dated 30.04.2014 in MP.NO.1/14 IN CRL RC.451/14.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.09.2019

PRONOUNCED ON : 10.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.451 of 2014

R.Samuel .. Petitioner/ Appellant /Accused

Vs

The State rep. by
Sub Inspector of Police,
Kaveripakkam Police Station,
Vellore District.

.. Respondent/
Respondent/Complainant

Criminal Revision preferred under Section 397 and 401 Cr.P.C. to set aside the judgment dated 19.03.2014 made in Crl.A.No.107 of 2010 on the file of the II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District confirming the conviction imposed in judgment dated 03.05.2010 made in C.C.No.181 of 2007 on the file of the Judicial Magistrate No.I, Walajapet, Vellore District.

For Petitioners : Mr.E.Kannadasan

For Respondent : Mrs.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

O R D E R

This Criminal Revision has been preferred challenging the judgment dated 19.03.2014 passed by the II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District confirming the conviction and sentence dated

03.05.2010 passed by the Judicial Magistrate No.I, Walajapet, Vellore District in C.C.No.181 of 2007.

2. It is the case of the prosecution that on 06.08.2007, around 09.00 a.m., the petitioner was driving his car bearing registration No.TN 25 D 8409 in a rash and negligent manner and hit a TVS 50 motorcycle bearing registration No.TN 21 A 7863 from behind, resulting in the death of the pillion Elumalai and injuries to Devaraj (P.W.5).

3. On these allegations, final report in C.C.No.181 of 2007 was filed before the District Munsif-cum-Judicial Magistrate No.I, Walajah for the offence under Sections 279, 337, 304A IPC against the petitioner and charges were framed. When questioned, the petitioner pleaded 'not guilty'.

4. To prove the case, the prosecution examined 10 witnesses and marked 9 exhibits. When the petitioner was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he denied the same. No witness was examined on behalf of the petitioner or any document marked.

5. After considering the evidence on record and after hearing either side, the trial Court, by judgment and order dated 03.05.2010 in C.C.No.181 of 2007, convicted and sentenced the petitioner as under.

Provision under which convicted	Sentence
Section 279 IPC	fine of Rs.1,000/-, in default to undergo 4 weeks simple imprisonment
Section 337 IPC	fine of Rs.500/-, in default to undergo 2 weeks simple imprisonment
Section 304A IPC	3 months simple imprisonment

Aggrieved by the verdict, the petitioner filed C.A.No.107 of 2010, which has been dismissed by the II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District on 19.03.2014. Challenging the concurrent findings of the two Courts below, the petitioner is before this Court under Section 397 and 401 Cr.P.C.

6. Heard Mr.E.Kannadasan, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

7. Before advertng to the rival submissions, it may be necessary to state here that, a three Judge Bench of the Supreme Court in Girish Kumar Suneja Vs. CBI [(2017) 14 SCC 809], has held that the revisional jurisdiction is a discretionary one and can be exercised only if the High Court finds that there is an error apparent on the face of the record. For better appreciation, the relevant portion of the said ruling is extracted hereunder :

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 Cr.P.C."

7.1. 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.”

7.2. This legal principle has been reiterated very recently by the Supreme Court in *Bir Singh Vs Mukesh Kumar*

[(2019) 4 SCC 197], wherein, the Supreme Court formulated the following question of law :

"(i) whether a Revisional Court can, in exercise of its discretionary jurisdiction, interfere with an order of conviction in the absence of any jurisdictional error or error of law"

The answer of the Supreme Court to the aforesaid question is as under :

"19.It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

20.As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [(2008) 14 SCC 457], it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is therefore, in the negative."

8. The prosecution has proved beyond cavil that Elumalai died in the road accident that took place around 09.00 a.m. on 06.08.2007. Dr.Srivnivasan (P.W.9), who conducted autopsy on the body of the deceased and issued post-mortem certificate (Ex.P5), has deposed about the injuries found on the body of the deceased and the probable cause of death. The defence has also not denied this. However, Mr.Kannadasan, learned counsel for the petitioner submitted that Devaraj (P.W.5), who was on the wheels of the TVS 50, at that time, would not have seen the petitioner because, it was a collision from behind and therefore, there is no material to show that it was the petitioner, who had driven the offending car. Though the evidence of Devaraj (P.W.5) cannot be relied upon for this purpose, as rightly contended by the learned counsel, yet, the evidence of Jayaraman (P.W.1) does implicate the petitioner.

9. Jayaraman (P.W.1), has stated that, he is a relative of the deceased and that on the fateful day, the deceased Elumalai, his son Devaraj (P.W.5) and he (P.W.1) were going by two motorcycles to the cattle market for purchase; they were going from west to east; Devaraj (P.W.5) and Elumalai were going together and he was following them behind; at that time, the car driven by the petitioner came at a high speed and hit the vehicle of

Devaraj (P.W.5), due to which, both of them were thrown on the ground, resulting in Devaraj (P.W.5) sustaining serious injuries and Elumalai dying on the spot. He identified the petitioner as the driver of the car.

10. Mr.Kannadasan took this Court to the cross-examination of Jayaraman (P.W.1) and submitted that he (P.W.1) has stated that he does not know who drove the car. This Court perused that portion of the evidence of Jayaraman (P.W.1) and it is not so.

11. Jayaraman (P.W.1) examined in-chief on 10.01.2008 and he was recalled and cross-examined on 01.12.2009. When he was asked in Tamil as to whether, he knows the details of the of the driver who had driven the car, he has stated in the negative. This answer recorded in Tamil makes it appear, as if he does not know who had driven the offending car. What he has meant is that, he does not know the details of the driver and he has not stated that the petitioner was not the driver.

12. Be that as it may, a specific suggestion has been put by the defence to Jayaraman (P.W.1) that, while the petitioner was trying to negotiate his vehicle, the two-wheeler of the deceased suddenly crossed across the national highway, on seeing that, the petitioner tried to avert the accident by turning to the right, despite which, the accident had taken place. Jayaraman (P.W.1) had denied this suggestion. Thus, even according to the petitioner, it was he, who was on the wheels of the offending car at the relevant point of time and he tried to avert the accident. Therefore, it is too late in the day, to say that the petitioner was not identified by the prosecution witnesses.

13. Learned counsel for the petitioner submitted that Devaraj (P.W.5) has admitted that he does not possess a valid two-wheeler license and hence, on account of inexperience, he suddenly darted across the highway resulting in the mishap. It is true that Devaraj (P.W.5) has admitted that he does not possess a valid two-wheeler license. On this score alone, this Court cannot come to the conclusion as suggested by the learned counsel for the petitioner in the course of his arguments, without any evidence in support of this plea. This Court does not find any infirmity in the findings of facts arrived at by the two Courts below warranting interference.

In the result, this Criminal Revision stands dismissed and the judgment of conviction and sentence passed by the appellate Court in Crl.A.No.107 of 2010 dated 19.03.2014 and the trial Court in C.C.No.181 of 2007 dated 03.05.2010 are confirmed. The trial Court is

directed to secure the presence of the petitioner to undergo the remaining period of sentence, if any. Registry is directed to send the original records to the Sessions Court and the trial Court forthwith.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional District and Sessions Judge,
Vellore at Ranipet, Vellore District

2. Do thro the Principal sessions Judge,Vellore

3.The Judicial Magistrate No.I,
Walajapet, Vellore District.

4.The Public Prosecutor,
High Court, Madras.

5.The section officer,
Criminal Section,
High Court, Madras.

(To send records to the Sessions Court
Trial Court forthwith)

+1cc to Mr.E.Kannadasan , Advocate SR.No. 78005

CRL.R.C.No.451 of 2014

A.SK(14/10/2019)

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