

Bail Slip

The Petitioners/Appellants/Accused 2 to 6 namely 1.Mr.K.Govindaraj S/o Kandasamy Achari, 2.K.Dhanapal S/o Kandasamy Achari, 3.K.Krishnan S/o Kandasamy Achari 4.M.Matheswari W/O Maruthamuthu, 5.Arumugam S/O Pachiappan Gounder 6.N.Nambi rajan S/O Kathirvel in CA 16/14 on the file of Principal District and Sessions Judge, Dharmapuri, were directed to be released on bail as per order of this Court dated 23.2.2017 and made in Crl.M.P.No.724/17 in Crl R.C 67/17 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.01.2019

Pronounced on: 08.02.2019

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.Revision Case No.67 of 2017 &
Crl.M.P.No.2248 of 2017

1. K.Govindaraj
2. K.Dhanapal
3. K.Krishnan
4. M.Madheswari
5. Arumugam
6. N.Nambirajan

.... Petitioners/Appellants/Accused

Vs

1. State represented by
The Inspector of Police,
District Crime Branch,
Dharmapuri.1st Respondent/Complainant

2. D.N.C.Elangovan ...2nd Respondent
(R2 impleaded as per order of this Court dated 21.2.2018 and
made in Crl.MP.No.2247/18 in Crl.R.C.No.67/17)

PRAYER : Criminal Revision is filed under Section 397 r/w 401 Cr.P.C., against the judgment of conviction dated 3.6.2016 in C.A.No.16 of 2014 passed by the learned Principal District and Sessions Judge, Dharmapuri, confirming the conviction and sentence imposed by the learned Judicial Magistrate No.I, Dharmapuri in C.C.No.272 of 2004 by judgment dated 1.4.2014.

For petitioners : K.Thirugnanam
For Respondents : Mr.Harihara Arun Somasankar,GA
for R1
: Mr.S.Umapathy for R2

JUDGMENT

This Criminal Appeal Present appeal has been preferred against the judgment of conviction and sentence dated 3.6.2016 in C.A.No.16 of 2014 passed by the learned Principal District and Sessions Judge, Dharmapuri, confirming the conviction and sentence imposed by the learned Judicial Magistrate No.I, Dharmapuri in C.C.No.272 of 2004 by judgment dated 1.4.2014.

2. The petitioners herein are the accused. They were charged under Sections 418, 420, 423, 465 and 468 IPC. The prosecution case is that the father of the defacto complainant, Late D.N.Chinnasamy during his life time, purchased the properties in S.No.261/3 measuring 10 cents through registered sale deeds dated 30.3.1979 and after his demise, the defacto complainant inherited the same. The petitioner/A6 filed a suit in O.S.No.84 of 1982 on the file of Sub Court, Krishnagiri against one Somu Achari for specific performance and the same was dismissed. Against which, A6 preferred an appeal in A.S.No.120 of 1987 before the District Court, Dharmapuri at Krishnagiri, which was also dismissed. In the meantime, the father of the defacto complainant filed a suit in O.S.No.341 of 1991 before the District Munsif Court, Dharmapuri against the accused for declaration of his title to the subject property. The said suit was decreed in his favour, confirming his title to the subject property. While so, accused 1 to 5, with common intention of cheating the defacto complainant and his family members regarding the subject properties purchased by the father of the defacto complainant, fraudulently and dishonestly and also with intention to cause wrongful loss to the defacto complainant, executed a sale deed in favour of accused No.6 on 4.4.2004 vide document No.698 of 2003. Further, in pursuance of said common intention, accused No.7 knowing all the facts regarding the subject property, entered into a registered sale agreement with accused No.6 on 16.5.2003 vide Document No.89 of 2003 before the Sub Registrar Office, Dharmapuri and thereby all the accused committed the offences mentioned above. After the investigation, the first respondent police, laid a final report before the trial Court.

3. The trial Court, on evaluation of the evidence both oral and documentary, has held that the prosecution has proved the case as against the accused beyond reasonable doubt and

accordingly, by judgment dated 1.4.2014 convicted the accused for the offence under Section 423 IPC and sentenced them to undergo two years simple imprisonment and for the offence under Section 465 IPC and sentenced them to undergo two years simple imprisonment and also for the offence under Section 468 IPC and sentenced to undergo three years simple imprisonment and to pay a fine of Rs.1000/- each in default, to suffer one month simple imprisonment. Aggrieved by the same, the accused preferred an appeal vide C.A.No.16 of 2014 before the learned Principal District and Sessions Judge, Dharmapuri. By judgment dated 3.6.2016, the learned Principal District and Sessions Judge, Dharmapuri, dismissed the appeal while confirming the conviction and sentence passed by the learned Judicial Magistrate, Dharmapuri. Challenging the same, the accused are before this Court.

4. During the pendency of the present Revision Case, the petitioners moved a Miscellaneous Petition in CrI.M.P.No.2248 of 2018 before this Court, seeking permission to compound the offence under Sections 465, 468 and 423 IPC, for which they have been convicted and allow the Criminal Revision Case.

5. In this regard, Mr.K.Thirugnanam, learned counsel appearing for the petitioners would submit that during pendency of the present revision case, the parties have amicably settled the disputes among themselves by entering into a compromise before Lok Adalath, Dharmapuri vide Case No.252 of 2017 dated 9.11.2017 in and by which, the accused/petitioners have accepted the right and title of the defacto complainant in respect of the subject property and therefore, he prayed this Court to permit the parties to compound the offences in respect of which, the petitioners have been convicted and sentenced or in the alternate to take a lenient view in regard to the sentence awarded by the Courts below in the interest of justice in order to facilitate them to live peacefully by giving a quietus to the controversy. The learned counsel would point out that the Hon'ble Supreme Court in number of cases, while taking into account the compromise entered between the parties, reduced the sentence imposed on the accused to the period already undergone, though the offences were not compoundable. He would rely upon the following decisions, viz.,

i) (2012) 10 SCC 303 (Gian Singh versus State of Punjab and another), wherein, the Hon'ble Supreme Court has held in paragraphs 58 and 61 as under:

"58.In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by

public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed."

"161.But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is

put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

ii) (2012) 12 SCC 772 (Surath Singh versus State of Uttaranchal (now Uttarakhand) and another), wherein, the Hon'ble Supreme Court has observed as under:

"We have heard learned counsel for the parties and, in particular, the learned counsel appearing for respondent no. 2. He submits that he has compromised the lis with the appellant at her own will. In view of the above, while disposing of this appeal, we accord permission to compound the offences and the effect of this would be the acquittal of the accused with the offences he is charged with."

iii) ''2017(2) MWN 229 (SC) (Unnikrishnan @ Unnikuttan versus State of Kerala)", wherein, the Hon'ble Supreme Court has permitted to compound the offence which is not compoundable in view of the settlement arrived at by the parties. In paragraphs 9 to 13, it has been held as under:

'9) In the case on hand, the petitioner is convicted for the offence punishable under Section 394 of the IPC and is sentenced to two years Rigorous Imprisonment. We are aware that the said offence is not compoundable within the scope of Section 320 Cr.P.C.

10) In series of decisions i.e. Bharath Singh vs. State of M.P. and Ors., 1990 (Supp) SCC 62, Ramlal vs. State of J & K, (1999) 2 SCC 213, Puttaswamy vs. State of Karnataka and Anr, (2009) 1 SCC 711, this Court allowed the parties to compound the offence even though the offence is a non-compoundable depending on the facts and circumstances of each case. In some cases this Court while imposing the fine amount reduced the sentence to the period already undergone.

11) What emerges from the above is that even if an offence is not compoundable within the scope of Section 320 of Code of Criminal Procedure the Court may, in view of the compromise arrived at between the parties, reduce the sentence imposed while maintaining the conviction.

12) Having regard to the facts of the present case, while taking into account the settlement

arrived at between the parties and also considering the affidavits filed before us by each one of the applicants by way of (4 of 4) [CRLMP-649/2016] joint application, we allow the application seeking permission to compound the offences.

13) The Special Leave Petition is disposed of accordingly."

iv) 2018 (1) MWN (Cr.) 440 (Packiaraj versus State, rep. by Inspector of Police, Eral Police Station, Thoothukudi), wherein, a learned single Judge of this Court, after following the series of decisions rendered by the Hon'ble Supreme Court in respect of the subject matter, has ultimately held in paragraph 14 as under:

"14. Considering the submissions made by the learned Counsel on either side and on carefully perusing the materials placed on record, this Court is of the view that the offence committed by the petitioner/accused is non-compoundable. Absolutely, such offences should be curtailed and the Accused, who committed such an offence should be seriously punished. However, in this case, the parties themselves have compromised the matter and filed a Memo of Compromise to that effect. A perusal of the said Memo of Compromise would go to show that both the Petitioner/Accused and the victim girl have got married during 2008 and they have two children and they are happily running their marital life. Apart from the Memo of Compromise, the victim girl, who is now a married woman and blessed with two children, has also filed an Affidavit, dated 24.10.2017, confirming the averments contained in the Memo of Compromise and thereby, had prayed for compounding the offence. In such circumstances, this Court is of the view that if the Petitioner/Accused is ordered to undergo the remaining period of sentence, it would definitely affect the family of the parties concerned and certainly it would not maintain peace in their family. Therefore, in the totality of the circumstances and also in the interest of peace and the lapse of time from the date of occurrence, this Court is of the view that though the conviction imposed on the Petitioner/Accused shall be maintained, the sentence imposed on him shall alone be reduced to the sentence, i.e. Sixty days, which has already been undergone by him."

6. In the instant case, the offence took place in the year 2004 when the petitioners/accused Nos.1 to 5, with common intention of cheating the defacto complainant and his family members and to cause wrongful loss to him, executed a sale deed in respect of the subject property, in favour of the petitioner/accused No.6 by executing a sale deed with false recitals and the petitioner/accused No.7 fully knowing well all the facts, entered into a registered sale agreement with petitioner/accused No.6. The trial Court on evaluation of entire evidence both oral and documentary, has found the accused guilty of the offences with which, they were charged and in the appeal, the learned lower appellate Court also confirmed the same. On going through the entire evidence available on record and the findings of the Courts below, this Court does not find any infirmity in the concurrent findings of the Courts below as regards the conviction of the petitioners/accused in order to interfere with the same. However, as regards the sentence imposed on the petitioners/accused, taking note of the fact that during the pendency of the revision case, both parties have amicably settled their disputes among themselves by entering into a compromise before the Lok Adalath, Dharmapuri vide Case No.252 of 2017 dated 9.11.2017 whereby, the petitioners/accused herein have accepted the right and title of the defacto complainant in respect of the subject property, which was reflected in the counter affidavit filed by the 2nd respondent/defacto complainant and in the light of the juridical pronouncements of the Hon'ble Supreme Court enunciated supra, this Court is of the considered view that the ends of justice would be met if the sentence of imprisonment awarded to the appellants/accused is reduced to the period already undergone.

7. For the foregoing reasons, the Criminal Revision Case deserves to be partly allowed and is accordingly, allowed in part by maintaining the conviction recorded by the trial Court and confirmed by the lower Appellate Court, but by reducing the sentence already undergone by the petitioners/accused. The sentence of payment of fine is not disturbed. The petitioners/accused shall be set at liberty forthwith if they are not required in any other crime. Consequently, connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The District and Sessions Judge,
Dharmapuri.
- 2.-Do- the Principal Sessions Judge,
Dharmapuri.
- 3.The Judicial Magistrate No.1,
Dharmapuri.
- 4.-Do- Thro the Chief Judicial Magistrate,
Dhamapuri.
- 5.The Inspector of Police,
District Crime Branch,
Dharmapuri.
- 6.The District Collector,
Dharmapuri.
- 7.The Director General of Police,
Mylapore, Chennai-4.
- 8.The Superintendent,
Central Prison, Salem.
- 9.The Public Prosecutor,
High Court, Madras.
- 10.The Section Officer,
Criminal Section, High Court,
Madras.

+1cc to Mr.R.Thirugnanam, Advocate Sr.11490

CRL.REV.CASE NO.67 OF 2017

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