



Bail Slip

Perumal, s/o Suyambulingam, M/54, who was released on bail by the order of this Court, dated 01.03.2019 made in CRL.MP(MD)No.1477 of 2019 in CRL.A(MD)No.125 of 2012.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL A(MD)No.125 of 2012

Perumal ... Appellant / Sole Accused

Vs.

State, rep.by
The Inspector of Police,
Thiruchendur Police Station,
Thiruchendur,
Cr.No.486 of 2010,
Thoothukudi District.

... Respondent / Complainant

Prayer : This Criminal Appeal is filed under Section 374 of the Criminal Procedure Code, to call for the records in S.C No.47 of 2012 on the file of the learned I Additional District and Sessions Judge, Thoothukudi and set aside the judgment dated 20.06.2012.

For Appellant : Mr.Antony S.Prabhakar

For Respondent : Mr.A.Robinson
Government Advocate (crl.side)

ORDER

The appellant was convicted and sentenced vide judgment dated 20.06.2012 by the I Additional District and Sessions Judge, Thoothukudi as follows :

Under Section 3(iii) of the Tamil Nadu Property (Prevention of Damage and Loss) Act.	Two years R.I and a fine of Rs.5,00/-, in default, three months R.I
Under Section 294(b) IPC	Two weeks S.I and a fine of Rs.250/-.



Under Section 506(ii) IPC

Two years R.I and a fine of Rs.5,00/-, in default, three months R.I

Questioning the conviction and sentence, this appeal has been filed.

2.The learned counsel appearing for the appellant submitted that there is no evidence in support of the charge under Section 294 (b)IPC. However, it is seen that there is evidence to sustain the charge under Section 3(iii) of the Tamil Nadu Property (Prevention of Damage and Loss) Act and under Section 506(ii) IPC.

3.The learned counsel for the appellant submitted that he would not question the finding of guilt in respect of those two charges. He would further submit that this Court should not send the appellant to prison and show leniency in the matter of punishment.

4.I am in agreement with the submissions of the learned counsel for the appellant. There is absolutely no evidence to sustain the charge under Section 294(b). It is true that even as per Ex.P6 rough sketch, the occurrence spot has been shown to be on the land that belongs to the appellant herein. But then, it is a fact that it was a public road laid by the local panchayat. The appellant was under the impression that on his land the local panchayat had committed an encroachment and illegally laid the road. That would not authorise him to take the law in his hand and damage the road. Therefore, the conviction imposed on the appellant under Section 3 (iii) of the Tamil Nadu Property (Prevention of Damage and Loss) Act is sustained.

5.But, the appellant legitimately thought an encroachment has been committed on his land and that therefore, he was entitled to remove the road as it was illegally laid on his land. The appellant appears to have acted out of bonafide belief. Therefore, the appellant need not be levied with the minimum sentence laid down in the statute. The appellant had been in prison for more than 15 days. Therefore, the sentence of imprisonment is reduced to the period already undergone. The conviction imposed on the appellant under Sections 294(b) and 506(ii) IPC is set aside.

6.With this modification in the matter of sentence, this appeal is partly allowed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar



To

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

2. The Superintendent, Central prison, Palayamkottai.

3. The Inspector of Police, Thiruchendur Police Station,
Thiruchendur, Thoothukudi District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.ANTONY S.PRABAHAR, Advocate (SR-74409[F] dated
10/07/2019)

CRL A(MD)No.125 of 2012

09.07.2019

skm

MS/25.09.2019/3P.6C