



Bail Slip

The Appellant/Accused namely Sikkandhar @ Noor Mohammed, was released on bail as per the order of this Court dated 18/08/2011 made in MP(MD)No.1/2011 in Crl.A(MD)No.245/2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.245 of 2011

Sikkandhar @ Noor Mohammed

... Appellant

Vs

The State rep. by the
Inspector of Police,
Bodi Police Station,
Theni District.
(In Crime No.68 of 2006)

... Respondent

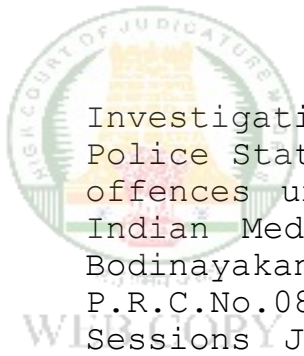
PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records relating to the Judgment dated 11.08.2011 made in S.C.No.5 of 2008 on the file of the Assistant Sessions Court, Theni and set aside the same as illegal and allow the above appeal.

For Appellant	: Mr.Ajmal Khan Senior Counsel for M/s.Ajmal Associates
For Respondent	: Mrs.Bharathi Government Advocate (Crl.side)

JUDGMENT

The appellant was convicted for the offences under Sections 420 and 304 of IPC and Section 15(3) of the Indian Medical Council Act, 1956.

2.The case of the prosecution is that the husband of Jakkammal-P.W.1 was having piles complaint and that, the appellant herein performed piles operation on Jakkaiyan, the husband of P.W.1 on 23.05.2006. Jakkaiyan developed some complications and he was admitted to the hospital on 26.05.2006. He passed away on 14.06.2006. In this regard, P.W.1-Jakkammal lodged Ex.P1 complaint before the Inspector of Police, Bodi Police Station. Ex.P7-FIR in Crime No.68 of 2006 was registered against the appellant for the offence under the provisions of the Indian Medical Council Act, 1956. After Jakkaiyan died, an alteration report was filed.



Investigation was taken up by the P.W.12-Inspector of Police, Bodi Police Station, who filed final report against the appellant for the offences under Sections 420, 304 of IPC and Section 15(2) of the Indian Medical Council Act, 1956 before the Judicial Magistrate, Bodinayakanoor. The case was committed to the Sessions Court in P.R.C.No.08 of 2007. The case was made over to the Assistant Sessions Judge, Theni in S.C.No.5 of 2008. Charges were framed against the appellant under the aforesaid provisions. The appellant denied the charges and claimed to be tried. The prosecution examined as many as 12 witnesses and marked Ex.P1 to Ex.P10. The learned trial Judge, by Judgment dated 11.08.2011, convicted and sentenced the appellant as follows:-

Accused	Penal Provisions	Punishment
Sole Accused	420 IPC	To undergo seven years rigorous imprisonment with fine of Rs.5,000/-.
	304 IPC	To undergo eight years rigorous imprisonment with fine of Rs.5,000/-.
	15(2) (a) of the Indian Medical Council Act	To undergo one year simple imprisonment.

Questioning the same, this appeal came to be filed.

3.The learned Senior Counsel appearing for the appellant contended that there is absolutely no material on record to sustain the conviction for the offences under Sections 420 and Section 304 of IPC. The learned Senior Counsel drew my attention to Ex.P6 (Forensic opinion). It has been categorically opined that Jakkaiyan died of liver disease and the complications arising due to the same. The Doctor who issued Ex.P6, was examined as P.W.10. It is relevant to note here that P.W.10, in his chief examination, had stated that the death of Jakkaiyan was only on account of liver disease. It is relevant to note here that Jakkaiyan did not die immediately. After the occurrence that was said to have been taken place on 25.05.2006, he finally died on 14.06.2006. Therefore, the conviction of the appellant for the offence under Section 304 of IPC is liable to be set aside. It is accordingly set aside.

4.The prosecution case is that the appellant portrayed himself as a qualified surgeon and the deceased, on believing his words, met him to undergo operation by the appellant. As already pointed out, the deceased died only on 14.06.2006. He was admitted on 25.05.2006. The deceased was a Head Constable. It was the deceased, who was the best person to state that as to how the appellant had misled him. No such statement was recorded from the deceased Jakkaiyan. It is not known that as to why the



Investigating Officer did not visit the hospital and record the statement. Since the best evidence is not forthcoming, I am inclined to hold that the charge under Section 420 of IPC is not made out.

5.I carefully went through the testimony of P.W.2-Jakkammal. Jakkammal has not anywhere stated in her testimony that the accused with any dishonest intention held out a false representation to her husband.

6.Thus for these twin reasons, non recording of any statement from the deceased by the Police and non implication of the appellant by P.W.1 as regards the charge of cheating, I am inclined to set aside the conviction of the appellant for the said offence also. It is reiterated that the elementary ingredients of cheating as set out in Section 420 of IPC are wholly absent in this case.

7.The learned Senior Counsel at this stage would clearly state that the appellant who is not a qualified medical practitioner, had actually treated the deceased Jakkaiyan for his piles complaint. The appellant was clearly not competent to practise medicine. Therefore, the offence set out in Section 15(2) (b) of the Indian Medical Council Act, 1956 is clearly attracted. The learned Senior Counsel would submit that following the incident, the appellant had bid goodbye to the practise of native medicine and he is now doing only some real estate business. This statement of the appellant made through his Senior Counsel is placed on record. The appellant is warned and cautioned not to engage in any kind of medical practise. Since the appellant had un-authorisedly treated the deceased Jakkaiyan for his piles complaint, the learned Senior Counsel submitted that the instead of sending the appellant to prison, he can be directed to pay compensation to P.W.1.

8.In view of the aforesaid submission made by the learned Senior Counsel, even while holding the appellant guilty of the offences under Sections 15(2)(b) r/w 15(3) of the Indian Medical Council Act, 1956, instead of punishing him with imprisonment for any term, I direct the appellant to deposit a sum of Rs.1,00,000/- to the credit of S.C.No.05 of 2008 on the file of the Assistant Sessions Judge, Theni, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the learned trial Judge, shall arrange to hand over the said amount as compensation to P.W.1. The conviction and sentence imposed on the appellant for the offences under Sections 420 and 304 of IPC are set



9. With this modification, this criminal appeal is partly allowed.

Sd/-

Assistant Registrar (crl.side)

WEB COPY

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rmi

To

1. The Assistant Sessions Court, Theni.
2. The Principal Sessions Judge,
Theni
3. The Judicial Magistrate,
Bodi
4. -Do- Thro' the Chief Judicial Magistrate,
Theni
5. The Superintendent,
Central Prison, Madurai
6. The Inspector of Police,
Bodi Police Station,
Theni District.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

Copy to:

The Section Officer,
Criminal section(Records),
Madurai Bench of Madras High Court,
Madurai(2 copies)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-80351[F] dated
07/08/2019)

Crl.A(MD)No.245 of 2011
05.08.2019

MK (18.02.2020) 4P 11C

<https://hcservices.ecourts.gov.in/hcservices/>