



BAIL SLIP

Bensam, S/o.Rajayan, aged about 44 years was released on bail vide order dated 22.07.2019 in Crl MP.(MD).No.6172/19 in CRL.RC (MD).No.441 of 2019.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 09.08.2019

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.RC. (MD)No.441 of 2019

Bensam : Appellant/Sole Accused

Vs.

The State of Tamil Nadu
Rep. by its Sub Inspector of Police,
Nithiravilai Police Station,
Tiruneveli District.
Crime No.73 of 2005

: Respondent/Complainant

Prayer: Criminal Revision has been filed under Section 399 r/w 401 of the Criminal Procedure Code, against the judgment passed in C.A.No.80 of 2006, dated 12.07.2018 on the file of the Additional District and Sessions Judge, (Fast Track Court), Kanniyakumari at Nagercoil, modifying the judgment of the Judicial Magistrate No.2, Kuzhithurai, in STC No.700 of 2005, dated 10.03.2006.

For Appellant : Mr.S.Sivakumar

For Respondent : Mr.R.Anandha Raj
Additional Government Pleader

J U D G M E N T

This Criminal Revision is directed against the judgment passed in C.A.No.80 of 2006, dated 12.07.2018 on the file of the Additional District and Sessions Judge, (Fast Track Court), Kanniyakumari @ Nagercoil, modifying the judgment of the Judicial Magistrate No.2, Kuzhithurai, in STC No.700 of 2005, dated 10.03.2006.

2.The case of the prosecution is that on 14.03.2005 at about 7.00 pm in Vaavarai Thaikkattu Potrai Vaavarai-Nadaikkavu Road, the accused drove the Tempo TN-74-Y-6368 in a rash and negligent manner and head on collision with the Hero Honda TN-74-Y-2512 which was



coming in the opposite direction. In that process, the rider and pillion rider of the two wheeler sustained injuries. In this regard, the Inspector of Police attached to Nithiravilai Police Station has registered a case in Crime No.73 of 2005 against the accused under Sections 279, 337, 338 IPC and Section 134 of the Motor Vehicles Act.

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3. In the trial court, 14 witnesses were examined and 9 Exhibits and 2 material objects were marked. When the accused was questioned about the incriminating circumstances, he denied the same. On the side of the accused, no witness was examined and 2 documents were marked. The trial court convicted the accused for the offence under Section 279 IPC and sentenced him to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one week and sentenced him to undergo RI for one year for each count and to pay a fine of Rs.1,000/-, each count, in default to undergo one month simple imprisonment for the offence under Section 338 IPC (2 counts) and to pay a fine of Rs.500/-, in default to undergo one week simple imprisonment for the offence under Section 138 of the Motor Vehicles Act.

4. Aggrieved by the judgment of the trial court, the petitioner preferred appeal before the Additional District and Sessions Judge, Nagercoil. The first appellate court modified the judgment of the trial court by setting aside the substantial portion of imprisonment as against the accused and fine amount and confirmed the default sentenced imposed by the trial court and apart from that, the accused shall pay a sum of Rs.25,000/-, as compensation to PW1 and PW2, in default to undergo 6 months SI and the find amount already paid by the accused is also ordered to be paid as compensation to PW1 and PW2. Aggrieved by the said order, the petitioner is before this court.

5. Heard both sides and perused the materials available on record.

6. The contention raised on the side of the petitioner/accused is that one Tempo hit and ran, while the victim came by two wheeler and there is no identification as to which tempo hit and ran and without searching the Tempo, the respondent police pick and choose method implicated the accused according to their whims and fancies and there was no damage found on the Tempo Van and none of the witnesses deposed as either the accused or the particular tempo hit and run and prays that the criminal revision has to be allowed.

7. In this case, PW1 and PW2 are injured witnesses. PW1 gave Ex.P1 complaint. PW1 in his complaint stated that on 19.03.2009 at 19.00 hours, he proceeded in his two wheeler towards Vaavarai and picked up Gopinathan in his two wheeler and at that time, the accused drove his vehicle in a rash and negligent manner and dashed



8.PW3 and PW4 are cited as eye witnesses. They have categorically stated that the accused hit the vehicle against the injured and the driver of the Tempo Van fled away.

9.On careful perusal of the evidence of PW1 to PW4, it reveals that the accused drove the vehicle in a rash and negligent manner and dashed against the injured. Considering the materials available on record, the first appellate court given a correct findings which does not require any interference by this court.

10.It is seen from the records that a memo has been filed by the learned counsel appearing for the petitioner to the effect that he has deposited Rs.25,000/- before the Judicial Magistrate No.2, Kuzhithurai, as per the order of the Additional District and Sessions Judge (Fast Track Court), Kuzhithurai, on 01.08.2019. The said memo is recorded.

11.In the result, this Criminal Revision is **dismissed**.

Sd/-
Assistant Registrar (AS)

/TRUE COPY/

Sub Assistant Registrar

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To,

1.The Additional District and Sessions Judge,
(Fast Track Court), Kanniyakumari @ Nagercoil.

2.The Judicial Magistrate No.2,
Kuzhithurai.

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

+1 CC to M/s.S.SIVA KUMAR, Advocate (SR-81072[F] dated 09/08/2019)

Order made in
Crl.RC. (MD) No.441 of 2019
09.08.2019

JM/14.10.2019/3P/5C