



Bail Slip

The Appellant/Accused namely Nandhakumar, S/o.Duraisamy, aged about 32 years was directed to be released on bail as per order of this Court dated 23.09.2015 made in MP(MD).No.1 of 2015 in Crl.RC (MD).No.439 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.07.2019

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.RC (MD)No.439 of 2015

Nandhakumar : Petitioner/Appellant/
Sole Accused

Vs.

1.The State represented by
The Inspector of Police,
All Women Police Station,
Musiri, Trichy District.
(Crime No.14 of 2013).

2.Leelavathi
(R2 impleaded as per the order
of this court, dated 13.02.2019
made in Crl.MP(MD)No.8804 of 2018) : Respondents

Prayer: Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, against the judgment, dated 29.07.2015 passed in C.A.No.163 of 2014 by the 1st Additional District Judge (PCR), Tiruchirappalli, confirming the judgment, dated 12.11.2014 passed in C.C.No.53 of 2013 by the Judicial Magistrate, Musiri.

For Petitioners : Mr.R.Thangapandian

For Respondent : Mr.APG Ohm Chairma Prabhu
Government Advocate
(Criminal side)

J U D G M E N T

This criminal revision is directed against the judgment, dated 29.07.2015 passed in C.A.No.163 of 2014 by the 1st Additional District Judge (PCR), Tiruchirappalli, confirming the judgment,



dated 12.11.2014 passed in C.C.No.53 of 2013 by the Judicial Magistrate, Musiri.

2.The case of the prosecution is that the accused the de-facto complainant are husband and wife and both were belonging to different community and they were fell in law, however, the marriage was opposed by the family of the accused and therefore, a complaint was lodged before the Musiri All Women Police Station and thereafter, their marriage was solemnized before Lord Siva Temple, Musuri and after the marriage, the accused started harassing her in so many ways and he used to drink alcohol and between her by stating that nothing has been provided by the house of the de-facto complainant and he had illegal connection with one Divya and when the same was questioned by her, the accused threatened her by stating that he will set up a false case against her that she had illegal connection with several persons. A panchayat has been held in this regard, however, on 04.04.2011, he eloped with the said Divya. Hence, this case.

3.The trial court found the petitioner guilty under Section 498(A) IPC and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo one month simple imprisonment. Against the judgment of the trial court, the petitioner preferred appeal before the first appellate court, which was also confirmed the findings of the trial court. Hence, the petitioner is before this court.

4.The learned counsel appearing for the petitioner submitted that the courts below failed to note that the complaint was given after separation period of 3-1/2 years was completed and hence, the complaint was given to harass the petitioner and that the findings of the first appellate court that the victim was subjected to cruelty by the petitioner by his indecent and illegal contact was wrong since the same has not been proved by any independent witness or evidence adduced by PW1 and PW1 in her deposition has categorically stated that the lady namely Divya is not residing in that village and mere reading of the judgments of the courts below show that the depositions have not at all attracted any ingredients of Section 498(A) IPC. In view of the above circumstances, the judgments of the courts below have to be set aside and the criminal revision has to be allowed.

5.The learned Government Advocate (Criminal side) appearing for the respondent/State submitted that the courts below after considering the entire materials available on record, passed the judgment, which does not require any interference of this court and prays for dismissal of the criminal revision.

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



7.It is now mainly argued on the side of the petitioner/accused that now the de-facto complainant/2nd respondent and the revision petitioner being the husband of the 2nd respondent are living jointly and leading a happy married life. Further, the learned counsel appearing for the petitioner submitted the decision reported in **(2007)2 MLJ (Crl) 70 (Raju and another Vs. Inspector of Police, New Hope Police Station)**. In that case, it has been held as follows:-

"It is well settled that while awarding sentence the effect of compromise can be taken into consideration. It has been stated that the appellant has remained in custody for a period of 14 months and there is no allegation that he assaulted the deceased."

8.In AIR 2009 SC 675 (Ishwar Singh Vs. State of Madhya Pradesh), it has been held as follows:-

"13.Now, it cannot be gainsaid that an offence punishable under Section 307 IPC is not a compoundable offence. Section 320 of the Code of Criminal Procedure, 1973 expressly states that no offence shall be compounded if it is not compoundable under the Code. At the same time, however, while dealing with such matters, this Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence.

14.In *Jetha Ram Vs. State of Rajasthan*, (2006)9 SCC 255, *Mrugesan & Ors. V. Ganapathy Velar*, (2001)10 SCC 504 and *Ishwarlal V. State of M.P.*, JT 1988(3) SC 366(1), this Court, while taking into account the fact compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in *Mahesh Chand V. State of Rajasthan*, AIR 1988 SC 2111, such offence was ordered to be compounded.

15.In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves



consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which, the Court may keep in mind."

9.Further, in the judgment reported in **2012 CRL.LJ.667** (Culab Das and others Vs. State of M.P), the Hon'ble Apex Court as follows:-

8.Having said that we are of the view that the settlement/compromise arrived at between the parties can be taken into consideration for the purpose of determining the quantum of sentence to be awarded to the appellants. That is precisely the approach which this Court has adopted in the cases referred to above. Even when the prayer for composition has been declined this Court has in the two cases mentioned above taken the fact of settlement between the parties into consideration while dealing with the question of sentence. Apart from the fact that a settlement has taken place between the parties, there are few other circumstances that persuade us to interfere on the question of sentence awarded to the appellants. The incident in question had taken place in the year 1994. The parties are related to each other. Both Appellant nos. 2 and 3 were at the time of the incident in their twenties. It is also noteworthy that the incident had led to registration of a cross case against the complainant party in which the trial Court has already convicted Veeraji and others for offences punishable under Sections 325/34 and 323 IPC and sentenced them to undergo imprisonment for a period of two years and a fine of Rs.300/- and imprisonment of six months under Section 323 IPC. We are told that the parties having settled the matter, will approach the High Court for an appropriate order in the appeal pending before it. More so, the appellants have already served substantial part of the sentence awarded to them.

10.Keeping in mind the above citations and the settlement arrived at between the parties as well as taking into account for determining the quantum of sentence and the accused served substantive part of sentence, it is held that the sentence imposed on the petitioner is reduced the sentence to the period already undergone. It is seen from the records that the petitioner has been incarceration between 10.04.2013 and 03.05.2013.

11.Accordingly, this Criminal Revision is **partly allowed**, by reducing the sentence awarded to the petitioner to the sentence



already undergone by him. In respect of fine amount, the findings of the courts below are confirmed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)

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To,

- 1.The I Additional District Judge, (PCR),
Tiruchirappalli.
- 2.The Judicial Magistrate, Musiri.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Inspector of Police,
All Women Police Station,
Musiri, Trichy District.
- 5.The Superintendent of Police, Trichy District.

Copy to:

The Section Officer, (2 Copies)
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.THANGAPANDIAN, Advocate (SR-76067[F] dated
18/07/2019)

Judgment made in
Crl.R.C (MD) No.439 of 2015
18.07.2019

JMN(13.12.2019) 5P : 9C