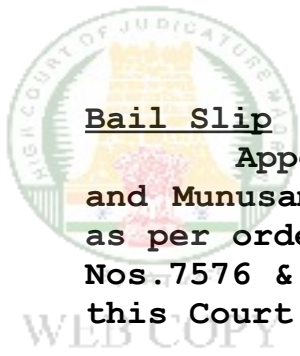




Bail Slip

Appellant/Accused namely A.Balasubramanian (A2), S/o.Arumugam and Munusamy (A1), S/o.Marudan are directed to be released on bail as per order of this Court dated 29.10.2018 and made in Crl.M.P(MD). Nos.7576 & 7577 of 2018 in Crl.R.C(MD).No.474 of 2017 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	18.06.2019
Date of Judgment	27.09.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.474 of 2017
and
Crl.MP(MD)No.7258 of 2018

1.Munusamy
2.Balasubramanian

: Revision Petitioners/
Appellants/Accused

Vs.

State represented by
The Deputy Superintendent of Police,
District Crime Branch,
Karur District.

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision Petition has been filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the judgment passed by the Additional Sessions Judge, Karur, in C.A.No.63 of 2017, dated 30.05.2017, confirming the Judgment passed by the Judicial Magistrate No.II, Karur, in C.C.No.11 of 2011, dated 04.04.2017.

For Revision Petitioner : Mr.AR.L.Sundaresan
for M/s.AL.Gandhimathi

For Respondent : Mr.A.Rabinson
Government Advocate
(Criminal side)

J U D G M E N T

This criminal revision is directed against the judgment passed by the Additional Sessions Judge, Karur, in C.A.No.63 of 2017, dated 30.05.2017, confirming the Judgment passed by the Judicial Magistrate No.II, Karur, in C.C.No.11 of 2011, dated



04.04.2017.

2.The case of the prosecution is that the de-facto complainant Murugan purchased landed property to an extent of 2.07 Acres from one Gopal, by a registered sale agreement in the year 2008 and originally, the said landed property was purchased by the 1st petitioner from one Thangavel and Mayilvaganan on 27.10.2004 and thereafter, the first petitioner had executed a General Power of Attorney on 27.03.2006 to one another Thangavel and the said Power of Attorney is registered and at this juncture, the Power of Attorney Holder of Thangavel sold out the property to one Gopal on 20.04.2006 through a registered sale deed and that being so, on 06.06.2010, when the de-facto complainant was working in the disputed land, the 1st petitioner came there along 10 to 20 persons and threatened the de-facto complainant stating that as if the landed property belonging to the 1st petitioner and he leased out the property to the 2nd petitioner. It is the further case of the prosecution that the 1st petitioner alleged to have created false documents and he also initiated a civil suit in O.S.No.523 of 2009 against the de-facto complainant with regard to the disputed property, whereas the civil court has not come to the conclusion nor give any finding that false document have been created or forged. Hence, this case.

3.After completing trial, vide order, dated 04.04.2017, learned Judicial Magistrate No.II, Karur, convicted the revision petitioners/A1 and A2 for the offence under Section 465 and directed them to undergo **six months Simple Imprisonment and two years simple imprisonment** for the offence under Section 468 IPC and imposed a fine of Rs.1,000/-, in default to undergo 6 months simple imprisonment and **6 months simple imprisonment** for the offence under Section 471 IPC. Feeling aggrieved by this order, appeal was preferred before the Principals Sessions Judge, Karur. However, the same was dismissed, vide detailed order, dated 30.05.2017.Challenging the said order, the present criminal revision has been filed.

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

5.It is mainly argued on the side of the petitioners that during the pendency of the criminal revision, the dispute with regard to immovable property has been settled amicably, which is the subject matter of the criminal case and a Memorandum of Agreement, dated 26.10.2018 had also been entered into and the petitioners are ready to cancel the lease deed, dated 05.12.2008 executed by them. 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."

6.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.

7.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.

8.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 petitioners is reduced the sentence to the period already undergone. It is seen from the records that the petitioner have been incarceration for 25 days and 16 days respectively.

9.In the result, this Criminal Revision is **partly allowed**, by reducing the sentence awarded to the petitioners to the sentence already undergone by them. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS)

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To,

1.The Additional Sessions Judge,
Karur.

2.The Judicial Magistrate No.II,
Karur.

3.Do through The Chief Judicial Magistrate, Karur.

4.The Deputy Superintendent of Police,
District Crime Branch, Karur.

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

Copy to:

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

Judgment made in
Crl.R.C (MD) No.474 of 2017
27.09.2019

JMN(21.11.2019) 5P : 8C