

**BAIL SLIP**

The first Petitioner/1st Accused Mr.Vasanthan, S/o.Raghupathy, aged 30 years was directed to be released on bail of this Court dated 19/4/12 made in MP(MD)No.1 of 2012 in CrI.RC(MD) No.593 of 2011.

BAIL SLIP

The Second Petitioner/2nd Accused Ramesh, S/o.Subbiah @ Natarajan was directed to be released on bail in this Court vide order dated 25/04/12 made in MP(MD)No.2 of 2012 in CrI.RC(MD)No.593 of 2011.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.R.C.(MD)No.593 of 2011

1.Vasanthan

2.Ramesh

...Petitioners/Appellants/Accused
Vs.

State rep. by

The Inspector of Police,
Cheranmahadevi Police Station,
Tirunelveli District.
(Crime No.86 of 2006)

...Respondent/Respondent/Complainant

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records of the learned Additional District and Sessions Judge (FTC-I), Tirunelveli in CrI.A.No.120 of 2008, by judgment dated 06.06.2011, confirming the conviction and sentence imposed by the learned Assistant Sessions Judge (Sub-Judge), Ambasamudram in S.C.No.44 of 2007 by the judgment dated 04.08.2008 and set aside the judgments of the Court below and acquit the petitioner.

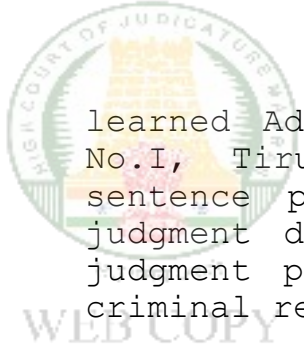
For Petitioners: Mr.R.Krishnan

For Respondent : Mr.A.Robinson

Government Advocate (CrI. Side)

O R D E R

The petitioners were tried for the offence under Sections 394 r/w. 397 of I.P.C. in S.C.No.44 of 2007, on the file of the learned Assistant Session Judge, Amabassamudram. The learned Trial Judge by judgment dated 04.08.2008 found the petitioners' guilty of the offence with which they were charged and sentenced them to undergo seven years rigorous imprisonment and also levied with fine of Rs.1,000/-. The petitioners filed C.A.No.120 of 2008 before the



learned Additional District and Sessions Judge, Fast Track Court No.I, Tirunelveli, questioning the judgment of conviction and sentence passed by the Trial Court. The Appellate Court vide judgment dated 06.06.2011 dismissed the appeal and confirmed the judgment passed by the Trial Court. Challenging the same, this criminal revision case has been filed.

2. When the matter was taken up for hearing, the learned counsel appearing for the revision petitioners submitted that he would be satisfied if the conviction is modified to one under Section 394 of I.P.C. alone instead of Section 397 of I.P.C. and the sentence of imprisonment is reduced to the period already undergone by them.

3. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent wanted this Court to sustain the judgments passed by the Courts below.

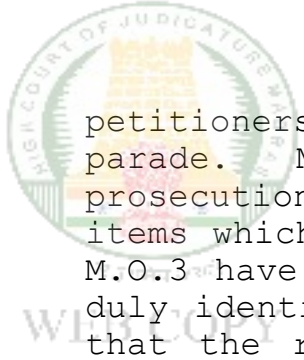
4. The case of the prosecution is that P.W.1 and P.W.2 along with the child of P.W.2 were returning to Edaiyankulam from Cheranmahadevi on 18.08.2006 at about 09.15 p.m. in their two wheeler bearing Registration No.TN 72 R 6242. When they were nearing Edaiyankulam, the petitioners herein are said to have waylaid them and threatened them with knife and took away the jewellery, worn by P.W.2. P.W.1 was also injured in the occurrence. After robbing, the petitioners are said to have left in the said two wheeler. Thereafter P.W.1 and P.W.2 came to their native place namely., Edaiyankulam and thereafter, went to Cheranmahadevi police station, where P.W.1 lodged Ex.P.1/complaint. Based on the same, Crime No.86 of 2006 was registered.

5. The petitioners were arrested by the Alangulam Police in connection with Crime No.324 of 2006 on 13.09.2006. Based on their confession, the involvement of the petitioners in the case on hand became known. Identification parade was conducted. The petitioners herein were identified both by P.W.1 and P.W.2. The police filed final report before the learned Judicial Magistrate, Cheranmahadevi. In P.C.R.No.35 of 2006, the case was committed to Sessions Court and it was made over to the learned Assistant Sessions Judge, Ambasamudram, in S.C.No.47 of 2007. The petitioners denied the charges and claimed to be tried.

6. The prosecution examined as many as 13 witnesses and marked Ex.P.1 to Ex.P.10. M.O.1 to M.O.3 were also marked. On the side of the accused no evidence was adduced.

7. The learned Trial Magistrate after proper consideration of evidence on record came to the conclusion that the charges against the petitioners were established by the prosecution beyond reasonable doubt.

8. This Court notes that P.W.1 and P.W.2 did not have any animosity against the petitioners herein. They had identified the



petitioners in the open Court as well as in the identification parade. More than anything else what clinches the case of the prosecution against the petitioners is the recovery of the very same items which were robbed from P.W.2 during the occurrence. M.O.1 to M.O.3 have been referred to in Ex.P.1/complaint and they were also duly identified by P.W.2. The Courts below therefore rightly held that the recovery has been established, even though the recovery witness turned hostile.

9.I am of the view that the involvement of the petitioners herein was fully proved by the prosecution. But then, I have to necessarily hold that the petitioners herein did not even attempt to cause any grievous hurt to P.W.1. What was caused to P.W.1 was only a simple injury. Therefore, I am of the view that the offence under Section 397 of I.P.C. has not been made out in this case. Therefore, I modify the conviction into one under Section 394 of I.P.C.

10.It is seen that the petitioners have spent more than 21 months in prison both during investigation and after the judgments. The petitioners were implicated in as many as nine cases by one and the very same police officer. The petitioners were acquitted in all the remaining eight cases. The petitioner's counsel firmly asserts that the petitioners have not come under any adverse notice after this. Which is not challenged by the respondent. In these circumstances, I am of the view that interest of justice would be served by modifying and reducing the sentence to the period already undergone. With this modification both in the matter of conviction and sentence, this criminal revision case is partly allowed.

Sd/-

Assistant Registrar (ADII)

// True Copy //

Sub Assistant Registrar(CS)

To:

- 1.The Additional District and Sessions Judge,
Fast Track Court No.I, Tirunelveli.
 - 2.The Assistant Sessions Judge, Sub-Judge, Ambasamudram.
 - 3.The Inspector of Police, Cheranmahadevi Police Station,
Tirunelveli District.
 - 4.The Superintendent, Central Prison, Palayamkottai, Tirunelveli
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai
- +One cc to M/s.R.Krishnan, Advocate, SR.No.72389

CrI.R.C. (MD) No.593 of 2011
28.06.2019