

**Bail Slip**

The Petitioner/Accused Balasubramanian, S/o.Ganesan, male, aged 44 years, has been released on bail as per the order of this Court dated 29/07/2011 made in CrI MP(MD)No.1 of 2011 in CRL RC(MD)No.629 of 2011.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.R.C(MD)No.629 of 2011

Balasubramanian

... Petitioner/Appellant/Accused

Vs

State: Represented by
Inspector of Police,
Ayyampettai Police Station,
Thanjavur District.
(Cr.No.80 of 2009)

... Respondent/Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for records pertaining to the Judgment dated 13.05.2011 in C.A.No.66 of 2010 on the file of the Additional Sessions Judge cum Special Court for EC Act Cases, Thanjavur, confirming the Judgment in C.C.No.83 of 2009 on the file of the Judicial Magistrate No.3, Thanjavur, dated 14.05.2010 and set aside the same.

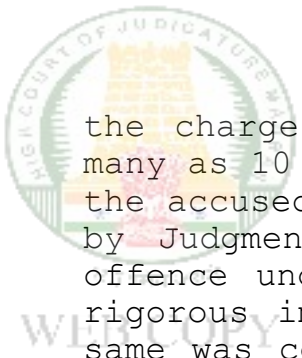
For Petitioner : Mr.T.A.Ebenezer

For Respondent : Mrs.S.Bharathi

Government Advocate (CrI.side)

ORDER

The petitioner was driving the Lorry bearing Registration No.TN 45 AL 6378 on 04.03.2009, at about 10 p.m., in Kumbakonam-Thanjavur Main Road. The case of the prosecution is that the petitioner's lorry was going from east to west. While so going, the petitioner's lorry hit the two wheeler ridden by one Sridharan from behind. In the resulting accident, Sridharan died. Hence, Crime No.80 of 2009 was registered on the file of the Inspector of Police, Ayyampettai Police Station. Investigation was undertaken and final report was filed before the Judicial Magistrate No.III, Thanjavur. Cognizance of the offences under Section 304A of IPC was taken in C.C.No.83 of 2009. The petitioner pleaded not guilty to



the charge and claimed to be tried. The prosecution examined as many as 10 witnesses and Ex.P1 to Ex.P9 were marked. On the side of the accused, no evidence was adduced. The learned trial Magistrate, by Judgment dated 14.05.2010 found the petitioner guilty of the offence under Section 304(A) of IPC and sentenced him to one year rigorous imprisonment and also levied a fine of Rs.1000/- and the same was confirmed in Criminal Appeal No.66 of 2010 on the file of the Additional Sessions Judge cum Special Court for EC Act Cases, Thanjavur, vide Judgment dated 13.05.2011. Questioning the same, this criminal revision case has been filed.

2.Heard the learned counsel on either side.

3.This Court carefully considered the rival contentions and also perused the evidence on record. P.W.1-Dilip Kumar is the defacto complainant in this case. Ex.P1 was lodged by him, based on which, Ex.P6-FIR was registered. In Ex.P1-complaint as well as Ex.P6-FIR, it has been mentioned that the deceased Sridharan was riding the two wheeler bearing registration No.TN 45 AI 2948. But in the final report, it has been stated that the petitioner's lorry hit the two wheeler bearing Registration No.TN 49 AA 7231. P.W.1 in his deposition would claim that he erroneously mentioned his motor cycle registration number instead of the number of the vehicle that was ridden by the deceased Sridharan. I am not however carried away by this explanation putforth in the testimony of P.W.1. When the lorry had hit two wheeler and the rider of the two wheeler died, it is strange that instead of mentioning the registration number of two wheeler that was involved in the accident, the registration number of the defacto complainant was given. It stretches one's credulity.

4.The learned counsel appearing for the revision petitioner pointed out that if the case of the prosecution is true, the two wheeler would have suffered heavy damage from behind. In this case, back side of the two wheeler had not suffered any damage. The Motor Vehicle Inspection report in respect of the two wheeler was marked as Ex.P4 through P.W.7. This Court went through the contents of Ex.P4. It has been mentioned that only the front headlight assembly was damaged and there was some damage to the front left side indicator. From the damaged report submitted by the Motor Vehicle Inspector, one can safely come to the conclusion that it would not have been hit by the speeding lorry from behind. The prosecution case against the petitioner is that he was driving the vehicle in question in a rash and negligent manner. If that be so, the two wheeler could not have hit the back side. These discrepancies go to the root of the matter and they probabalise the allegation made by the petitioner's counsel that in order to claim insurance, the family of the deceased have chosen to substitute the vehicle. Whether the two wheeler was substituted or whether the lorry itself was substituted, is not for me to say. But suffice it to say that benefit of doubt raised in this case is sufficient to acquit the accused. I have no hesitation to set aside the Judgments of the



Courts below. I acquit the accused. This criminal revision case is allowed. The fine amount, if any, paid by him shall be refunded forthwith. The bail bond, if any, executed by the revision petitioner shall stand cancelled.

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Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Additional Sessions Judge
cum Special Court for EC Act Cases,
Thanjavur.
2. The Principal Sessions Judge,
Thanjavur
3. The Chief Judicial Magistrate,
Thanjavur
4. The Judicial Magistrate No.3,
Thanjavur
5. The Inspector of Police,
Ayyampettai Police Station,
Thanjavur District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
MAdurai

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-71846[F] dated 27/06/2019)

Cr1.R.C (MD) No.629 of 2011
26.06.2019

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MK (05.09.2019) 3P 8C