



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.R.C. (MD)No.553 of 2015

and

M.P. (MD) Nos.1 & 2 of 2015

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Sathiyanesan

.. Petitioner/Appellant/A-2

Vs.

State through
The Inspector of Police,
Nithiravilai Police Station,
In Crime No.142/2008,
Kuzhithurai,
Kanyakumari District.

.. Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records relating to judgment in C.A.No.1 of 2012 dated 19.08.2015, on the file of the Sessions Judge, Fast Track Mahila Court, Nagercoil which was modified from the judgment of the learned Judicial Magistrate No.II, Kuzhithurai in C.C.No.174/2008 dated 20.12.2011, set aside the same and allow this revision.

For Petitioner : Mr.M.Subash Babu

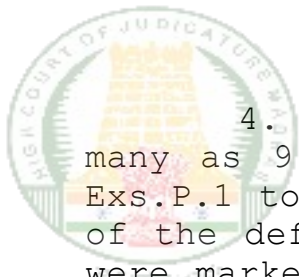
For Respondent : Mrs.S.Bharathi
Government Advocate [Crl. Side]

O R D E R

This Criminal Revision Case is filed by the accused A-2 against the concurrent finding of conviction awarded by the Lower Court as well as the Lower Appellate Court.

2. For the sake of convenience, the parties are referred to by their own ranking before the trial Court.

3. The case of the prosecution is that on 17.09.2008 at about 3:00 p.m., P.W.1 visited the memorial place of his parents at Balamadam. At that time, A1 and A2 using deadly weapons threatened P.W.1 for having visited the memorial place and caused grievous injuries to P.W.1. A case was registered against the accused A1 and A2 for the offence under Sections 323 & 325 of IPC by the Sub Inspector of Police, Nithiravillai Police Station and also filed the charge sheet before the learned Judicial Magistrate, No.II, Kuzhithurai.

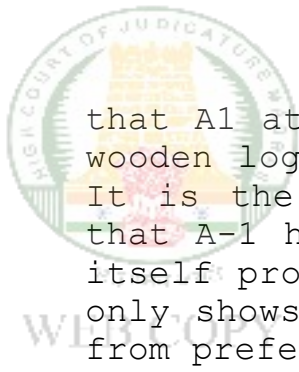


4. In order to prove the case, the prosecution examined as many as 9 witnesses as P.Ws.1 to 9 and marked 5 exhibits viz., Exs.P.1 to 5 and 2 material objects viz., M.Os.1 & 2. On the side of the defence, D.W.1 alone was examined and exhibits D.1 to D.7 were marked. After hearing the rival submissions, the trial Court found the accused A1 guilty for the offence under Section 323 of I.P.C. and sentenced him to pay a fine of Rs.1,000/- in default, to undergo two months Simple Imprisonment and A2 being found guilty for the offence under Section 325 of I.P.C. was sentenced to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.5,000/-, in default to undergo three months of Rigorous Imprisonment.

5. Aggrieved over the said order, the accused A1 and A2 preferred an appeal before the learned Sessions Judge Fast Track Mahila Court, Nagercoil in C.A.No.1 of 2012 dated 19.08.2015. The Lower Appellate Court modified the sentence ordered by the trial Court. Therefore, as in the case of A1, the sentence already imposed by the trial Court was confirmed and in the case of A2, for offence under Section 325 of IPC, the previous sentence of imprisonment ordered by the trial Court was modified from one year Rigorous Imprisonment to one month Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default, to undergo one month simple imprisonment. Against the concurrent findings, the present Criminal Revision Case came to be filed.

6. Mr.M.Subash Babu, learned counsel appearing for the accused, on instructions, would submit that though the trial Court and the lower appellate Court have concurrently held against the petitioner, however, lost sight of the property dispute between the petitioner and P.W.1/defacto complainant. In order to have an amicable settlement in the property dispute, P.W.1 has made a false complaint before the Law Enforcing Agency, which culminated in the complaint. Learned Counsel further submitted that P.W.s 2 to 5 turned hostile and there is no worthwhile evidence, which implicates the petitioner in the commission of the offence. In fact, P.W.2 who is alleged to have admitted P.W.1 in hospital, and projected as eye witness to the occurrence, denied the same even in chief examination, which led to him being treated as hostile. In the absence of the evidence of P.W.2, there is no other evidence in support of the prosecution. The courts below have not considered the materials on record in proper perspective and have erroneously convicted and sentenced the petitioner, which requires to be interfered.

7. Per contra, learned Government Advocate [Crl. Side], submitted that with regard to the property dispute, when P.W.1 questioned A-1 and A-2, the attack had taken place, in which P.W.1 sustained grievous injury. It is the further evidence of P.W.1



that A1 attacked him with a crowbar and A-2 attacked P.W.1 with a wooden log which resulted in the injuries on the person of P.W.1. It is the further submission of the learned Government Advocate that A-1 had not preferred any appeal against the sentence, which itself proves that the occurrence had taken place. However, this only shows that in view of the lesser sentence, A-1 had refrained from preferring any appeal.

8. The learned Government Advocate further relied on the evidence of P.W.7, the Doctor who had given treatment to P.W.1 and had deposed that P.W.1 was admitted in the hospital by P.W.2 and his name has been entered in the accident register, Ex.P-3. Ex.P-3 is a contemporaneous document, which clearly shows that P.W.2 was present at the time of occurrence, had seen the occurrence and had taken P.W.1 to the hospital. Though P.W.2 has turned hostile, for reasons best known, however Ex.P-3 proves the occurrence proper, which corroborates the testimony of P.W.1. Therefore, the learned Government Advocate [Crl. Side] submits that the courts below, on proper appreciation of the materials available on record has convicted and sentenced the petitioner herein, which warrants no interference at the hands of this Court.

9. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate [Crl. Side] appearing for the State and perused the materials available on record.

10. In the case of ***Damodar S. Prabhu Vs. Syed Babalal H., reported in [2010 (5) SCC 663]***, the Full Bench of the Hon'ble Supreme Court has held that where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others are compoundable only with the permission of the Court. In this regard, it is useful to extract hereunder paragraph Nos. 16 and 17:

'16.It is evident that the permissibility of compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point we can refer to the following extracts from an academic commentary [cited from : K.N.C. Pillai, R.V.Kelkar's Criminal Procedure, Fifth Edn. (Lucknow: Eastern Book Company, 2008) at p.444]

'17.2. Compounding of offences .-- A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers

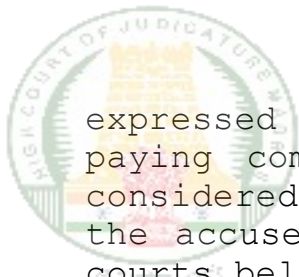


it expedient to recognise some of them as compoundable offences and some others as compoundable only with the permission of the Court.''

17. In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act [cited from : Arun Mohan, some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act - Trackling an avalanche of cases (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at p.5]:

''...Unlike that for other forms of crime, the punishment here (insofar as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeking the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.''

11. The case on hand, indisputably is not a case, which is falling under the realm of Section 138 of the Negotiable Instruments Act. However, this Court is not barred from taking cue from the ratio laid down by the Hon'ble Apex Court above. In this case, it is not a question of recovery, but it is only a question of retribution. The wrong doer has to suffer some punishment, be it in the form of imprisonment or in the form of compensation, where the offence can be compounded. In the case on hand, it is not in dispute that the petitioner and P.W.1 are related to each other and that on account of some property dispute, the altercation had happened, which resulted in P.W.1 being man-handled by the petitioner. However, as could be seen, the occurrence had taken place some time in the year 2007-2008 and a decade has passed since the same and the petitioner and P.W.1, being related, could have patched up their differences and entered into a cordial relationship and, therefore, to make the petitioner suffer incarceration at this distant point of time would not augur well with the entire family. But at the same time, it should not be lost sight of that the altercation had resulted in injuries on the person of P.W.1, which requires to be kept in mind. In such a backdrop, this Court is of the considered view that instead of sentencing the petitioner to suffer incarceration at this distant point of time, taking cue from the ratio laid down by the Hon'ble Apex Court in the judgment supra, and further taking into account the inclination expressed by the counsel for the petitioner to compensate the P.W.1 for the suffering and equally the consent



expressed by the learned counsel appearing for the accused for paying compensation in lieu of sentence, this Court is of the considered view that no useful purpose will be served in allowing the accused/petitioner to suffer incarceration, as ordered by the courts below.

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12. Even at the very outset, it could very safely be concluded that the decision arrived at by the Courts below does not call for any interference. P.W.1, in his evidence has deposed that A1 and A2 had attacked him due to some property dispute. The said deposition of P.W.1 finds corroboration in the form of the testimony of P.W.7, the doctor, who treated/admitted P.W.1, when he was brought to the hospital by P.W.2 coupled with Ex.P-3, the accident register, which is a contemporaneous record. Further, it is also not the case of the defence that there was no property dispute. The courts below have concurrently found that the testimonies of the prosecution witnesses clearly make out a case of assault carried out by A-1 and A-2 on P.W.1. The trial court as well as the lower appellate Court, on a conspectus of the facts emerging in the present case, has rightly convicted the accused. This Court is in complete agreement with the view arrived at by the Courts below, which does not suffer from any infirmity and, therefore, does not call for any interference.

13. However, at this juncture, the learned Counsel appearing for the petitioner submits that the petitioner is aged about 59 years and is suffering from age-old ailments. Moreover, the relationship of the petitioner and P.W.1 is now cordial and, hence, prays that the offence may be compounded by imposing any payment on the petitioner, to be paid as compensation. It is informed by the learned Government Advocate [Crl. Side] that pursuant to the conviction, the petitioner was under incarceration for a period of fifteen [15] days before grant of bail.

14. Hence, the judgment made in C.A.No.1 of 2012 by the learned Sessions Judge, Fast Track Mahila Court, Nagercoil dated 19.08.2015 is modified as under:-

(i) the petitioner shall deposit a sum of Rs.50,000/- within a period of four [4] weeks from the date of receipt of a copy of this order to the credit of C.A.No.1/2012 on the file of the learned Sessions Judge, Fast Track Mahila Court, Nagercoil;

(ii) P.W.1 is permitted to withdraw the amount of Rs.50,000/- within a period of one [1] week from the date of deposit, by producing necessary identification; and

(iii) Failing to deposit the above said amount within the stipulated period by the accused will lead to restoration of the earlier order passed by the Lower



Appellate Court made in C.A.No.1 of 2012 by the learned Sessions Judge, Fast Track Mahila Court, Nagercoil dated 19.08.2015, confirming the sentence of the accused (A1) to pay fine of Rs.1,000/- in default to undergo simple imprisonment for two months and in respect of A2, to undergo one month Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo one month simple imprisonment. The respondent Police shall be directed to secure the petitioner/A2 to undergo the remaining period of sentence as ordered by the Lower Appellate Court, stated supra.

15.With the above modification, this Criminal Revision Case stands dismissed. Consequently, connected M.P.(MD) No.1 &2 of 2015 is closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

mr/sts

To

- 1.The Sessions Judge,
Fast Track Mahila Court, Nagercoil.
- 2.The Judicial Magistrate No.II,
Kuzhithurai.
- 3.The Inspector of Police,
Nithiravilai Police Station,
Kuzhithurai,Kanyakumari District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.
- 5.The Section Officer-2 copies
Criminal Section [Records],
Madurai Bench of Madras High Court, Madurai.

ORDER MADE IN

CRL.R.C.[MD]No.553 of 2015

06.03.2020

KG(CO)

KM (03.11.2020) 6P 7C

<https://hcservices.ecourts.gov.in/hcservices/>