



**BAIL SLIP**

Senthil Kumar, S/o.Kaliyaperumal, Male, aged about 45 years/2016 (Sole Accused) is released on bail vide court order dated 21.06.2016 made in CRL MP(MD)No.36 of 2016 in CRL RC(MD)No.4 of 2016

WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 21.09.2020**

**CORAM**

**THE HONOURABLE MR. JUSTICE B.PUGALENDHI**

**Crl.R.C. (MD) .No.4 of 2016**

Senthil Kumar .. Petitioner/Accused

Vs.

State rep. by  
Sub-Inspector of Police,  
Pasupathypalayam Police Station,  
Karur District.

.. Respondent/Complainant

**PRAYER:** Criminal Revision Case, filed under Section 397 r/w 401 of the Criminal Procedure Code, against the Judgment passed in Crl.A.No.5 of 2014 dated 24.11.2015 by the Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Karur, confirming the judgment dated 14.02.2014 in C.C.No.505 of 2005 on the file of the learned Judicial Magistrate No.I, Karur.

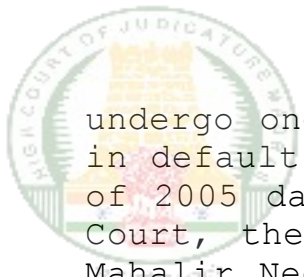
For Petitioner : Mr.T.Senthil Kumar

For Respondent : Mr.A.Robinson  
Government Advocate (Crl. Side)

**ORDER**

This revision petition is filed as against the orders of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Karur, in Crl.A.No.5 of 2014 dated 24.11.2015 and the orders of the learned Judicial Magistrate No.I, Karur in C.C.No.505 of 2005 dated 14.02.2014.

2.The petitioner was tried before the learned Judicial Magistrate for the offence under Section 326 and 506(i) IPC and in conclusion of the trial, the trial Court found him guilty for the offence under Section 326 IPC, convicted and sentenced him to



undergo one year rigorous imprisonment with a fine of Rs.1,000/-, in default to undergo six months simple imprisonment in C.C.No.505 of 2005 dated 14.02.2014. Aggrieved over the order of the trial Court, the petitioner filed an appeal before the Sessions Court, Mahalir Neethi Mandram, Karur in Crl.A.No.5 of 2014. The learned Sessions Judge, dismissed the above appeal and confirmed the orders of the trial Court. Challenging the concurrent judgments of the trial Court and the appellate court, the petitioner preferred the present revision petition.

3.Heard Mr.T.Senthilkumar, learned counsel appearing for the petitioner and Mr.A.Robinson, learned Government Advocate (Crl. Side) appearing for the respondent police.

4.At the out set, the learned counsel appearing for the petitioner submits that even admitting the offence, it would fall only under section 335 of IPC and not under section 326 IPC, which could be compounded under section 320 Cr.P.C. He further submits that the PW1 / defacto complainant has already filed an affidavit before this Court that they have solved their issues amicably. The learned counsel for the petitioner further submits that the petitioner has already undergone 90 days imprisonment pending trial and requested this Court to reduce the sentence to the period of incarceration already undergone by the petitioner.

5.In support of his contention, the learned counsel for the petitioner relied upon the judgment of the Honourable Supreme Court delivered in the case of **Hasi Mohan Barman and another Vs. State of Assam and another** made in **Appeal (Crl.) 1534 of 2007**, wherein it has been held as follows:

8. Section 320 of Code of Criminal Procedure says that the offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table. A perusal of Section 320 will show that the offence under Section 313 IPC is not compoundable. Therefore, the consent given by the wife PW-1 or the affidavit filed by her cannot be utilized for the purpose of recording a finding of acquittal in favour of the accused appellants.

9. There are some decisions of this Court wherein the factor of compromise between the accused and the complainant (or injured or person aggrieved) has been taken into consideration for reducing the sentence.

10. The first decision on this point was rendered by this Court in *Ram Puja and others vs. State of Uttar Pradesh* (1973) 2 SCC 456, wherein the trial court had

<https://hcservices.ecourts.gov.in/hcservices> convicted the accused under Section 326 IPC which is a



non-compoundable offence and had sentenced the accused to four years R.I. The High Court took into consideration the compromise between the accused appellant and the injured and reduced the sentence to two years R.I. This Court, after observing that the fact of compromise can be taken into account in determining the quantum of sentence, reduced the sentence to the period already undergone which was little more than four months and further imposed a fine of Rs.1500/- on each of the appellants. *Surendra Nath Mohanty and another vs. State of Orissa (1999) 5 SCC 238* is a decision of a Bench of three learned Judges. It was observed that in view of the legislative mandate contained in Section 320 Cr.P.C. an offence can be compounded only in accordance with the provisions of the said section. The Court followed the view taken in the case of *Ram Pujan (supra)* and having regard to the fact that the parties had compromised and a period of ten years had elapsed from the date of the incident reduced the sentence of five years R.I. Imposed under Sections 307 and 326 IPC to the period of sentence already undergone which was three months and also imposed fine of Rs.5,000/-.

11. There are several other decisions of this Court wherein factor of compromise has been taken into consideration and the sentence has been reduced mostly to the period already undergone and they are *Bankat and another vs. State of Maharashtra (2005) 1 SCC 343*, *Badrilal vs. State of M.P. (2005) 7 SCC 55* and *Jetha Ram and others vs. State of Rajasthan (2006) 9 SCC 255*.

12. Following the view taken in the above noted cases we are of the opinion that the complainant and the principal accused having already married it will be in the interest of justice if the sentence is reduced to the period already undergone. The appeal is accordingly partly allowed. The conviction of the appellants under Section 313 IPC is maintained but the sentence is reduced to the period already undergone which appears to be about ten months. The fine imposed upon the appellants is also set aside. The appellants are on bail. Their sureties and bail bonds are discharged.

6.The learned counsel for the petitioner also relied upon the Judgment of the Honourable High Court of Panjab and Haryana delivered in the case **Som Nath Vs. State of Haryana** made in **Crl.R.C.No.2374 of 2012 (O&M)**, wherein it has been held as



9. Learned counsel for the petitioner does not challenge the conviction recorded by both the Courts below but has submitted that grievous injury on the left thumb, that was only a chip fracture. He has further contended that before the trial Court the parties have arrived at a compromise but that was not accepted on the ground that offence punishable under Section 326 IPC is non-compoundable and prayer has been made for reduction in sentence.

10. As per conviction slip, the petitioner has undergone incarceration for a period of three months and four days, out of the substantive sentence of two years under Section 326 of the IPC. As per medical report the complainant has suffered a chip fracture on the left thumb.

11. In paragraph No.10 of the judgment passed by the Judicial Magistrate Ist Class, there is a reference of compromise Mark A. The trial Court observed that in view of compromise Mark A and in view of the statement of complainant Baaj Chand, it stands established on the file that the accused Som Nath caused injuries to the complainant. So, the trial Court has impliedly accepted the compromise.

12. The petitioner has been convicted by both the Courts below under Section 326 of the IPC and has undergone incarceration for more than three months out of substantive sentence of two years. He is facing trial for the last more than four years. There is compromise Mark A between the parties So, the end of justice would be met in case the sentence is reduced to the period already undergone. However, the sentence of fine imposed under Section 326 IPC stands affirmed.

13. With the modification in the sentence, the revision petition stands disposed of accordingly.

7. Applying the ratio laid down in the above judgments with the facts and circumstances of the case, the Kerala High Court has also decided the case **T.K.Binu Vs. State of Kerala**, in **Crl.R.P.No.966 of 2001** by referring the above judgments of our Honourable Supreme Court as well as the High Court of Panjab and Haryana, wherein it has been held as follows:

3. On going through the evidence given by PW1, it is clear that it was he who questioned the accused regarding the previous incident and there ensued a wordy altercation and then a scuffle. It was during that scuffle the accused bit the right ear of PW1 causing the injury as stated above. Therefore,

Accordingly, the argument advanced by the learned counsel



for the petitioner that the offence would fall only under Sec.335 IPC and not 326 IPC, the conviction is to be altered to one under Sec.335 IPC.

4. Learned counsel for the petitioner submits that the incident took place in the year 1993 and that the Crl.R.P. No.966 of 2001 accused is a close relative of the injured and so, the sentence may be modified limiting it to fine. Considering all the aspects, I find that the sentence can be modified.

In the result, this Crl.R.P. is disposed of as stated below :-

While setting aside the conviction and sentence passed against the petitioner for offence punishable under Sec.326 IPC, the petitioner is convicted of the offence under Sec.335 IPC and he is sentenced to undergo imprisonment till the rising of the court and to pay Rs.20,000/- as compensation to PW1, the injured/complainant. In default of payment of the compensation amount, the petitioner will undergo S.I. for two months.

8.The petitioner and the defacto complainant are neighbours. On the date of occurrence on 13.09.2005, there was a dispute between the petitioner and his brother one Sambath and in that quarrel, the victim Vadivel / husband of the defacto complainant interfere and attempted to pacify them. While doing so, the petitioner had bite the finger of the said Vadivel and the victim suffered a grievous injury. The tip of his index finger has been chopped. Admittedly, there is no motive or any intention between the petitioner and the victim Vadivel. The dispute was among the brothers on a property issue and the neighbour Vadivel voluntarily intervened their issue and attempted to pacify. But in that process, he suffered the injury.

9.The petitioner was also arrested and languished imprisonment for 90 days. The victim Vadivel has also died on 27.06.2014 in an accident. The wife of victim Vadivel namely Kalaiselvi / PW1 / defacto complainant in this case has also filed an affidavit before this Court that they are very close family friends and also on the advise of well-wishers, they made a compromise out of the court and maintained a cordial relationship for the past 6 years. This affidavit was also verified through the learned Government Advocate (Crl. Side) as to whether it has been made voluntarily. The learned Government Advocate (Crl. Side) has also stated that it has been made voluntarily by the victim's wife and the respondent police has also verified the same and submitted a report before this Court.



10. Section 335 of IPC reads as follows:

**"335. Voluntarily causing grievous hurt on provocation**

Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both."

11. The facts and the circumstances of the case falls within the ambit of Section 335 of IPC. In view of the facts and circumstances of the case and the further developments, this Court is inclined to partly allow this petition, modifying the conviction for the offence under section 335 of IPC instead of 326 IPC and modified the sentence as a period already under gone by him.

12. Accordingly, this revision petition is partly allowed.

**Sd/-  
21.09.2020**

This petition having been posted on 01.10.2020 under the caption "For Clarification" in pursuance to the order of this Court dated 21.09.2020 and made herein in the presence of the abovesaid Advocate, this Court made the following order:-

Today, this Criminal Revision case is listed before this Court under the caption 'for clarification'.

2. On 21.09.2020, this Court, considering the submissions made by the learned counsel on either side, partly allowed the criminal revision case, modifying the conviction for the offence under Section 335 of IPC instead of 326 IPC and modified the sentence as to the period of imprisonment already undergone by him i.e., 90 days.

3. But, it was brought to the knowledge of this Court that this petitioner underwent imprisonment, only from 14.09.2005 to 23.09.2005, during the trial. According to the learned counsel for the petitioner, the petitioner has also underwent the imprisonment in the Central Prison, Tiruchirappalli, pending the criminal appeal before the appellate Court. However, the



respondent police has not collected those details.

4. Be that as it may, the sentence has been modified by earlier order as to the period of imprisonment already undergone, on the pretext that the petitioner has already undergone 90 days of Imprisonment. Therefore, this Court clarifying the earlier order, is inclined to issue the following directions:

1. The period of punishment is confined up to 90 days including the period already undergone, as per Section 482 Cr.P.C.
2. The trial Court shall verify with the Sub Jail, Karur, as well as the Central Prison, Tiruchirappalli, with regard to the period of imprisonment already undergone by the accused/petitioner.
3. The Superintendent of Police, Central Prison, Tiruchirappalli, is also directed to ascertain from the records as to the period of incarceration already undergone by the accused.
4. If the petitioner/accused has not completed 90 days of imprisonment, the trial Court is directed to secure the petitioner and confine him in the prison to undergo the remaining period and
5. The learned Judicial Magistrate No.I, Karur, is directed to ensure that the petitioner shall undergo the remaining period, if any, up to the period of 90 days.

5. The learned Additional Public Prosecutor is directed to communicate this order to the Superintendent of Central Prison, Tiruchirappalli.

Sd/-

Assistant Registrar(CS-II)

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/ /2020

Sub Assistant Registrar(CS)

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*Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To

1. The Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Karur.



2.The Judicial Magistrate No.I, Karur.

3.The Chief Judicial Magistrate, Karur.

4. The Sub-Inspector of Police,  
Pasupathypalayam Police Station,  
Karur District.

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

Copy to  
The Superintendent,  
Central Prison,  
Tiruchirappalli.

**Crl.R.C. (MD) .No.4 of 2016  
21.09.2020**

NS (CO)  
TR(22.10.2020) 8P 7C