



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.R.C.(MD)No.653 of 2016

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1. Thulasidas
2. Krishnadoss

.. Petitioners/Accused/Appellants

Vs.

State rep. by,
The Inspector of Police,
Rajakkamangalam police station,
Nagercoil,
Kanniyakumari District.
Crime No.212 of 2015

.. Respondent/Respondent/ Respondent

Prayer : This Criminal Revision petition is filed under Sections 397 r/w. 401 of Cr.P.C., to call for records and set aside the order made in C.A.No.53 of 2010 dated 06.08.2016 on the file of Magalir Fast Track Court, Nagercoil, modified the Judgment of the II Additional Assistant Sessions Judge, Nagercoil, made in S.C.No.50 of 2008, dated 13.07.2010.

For Petitioners	: Mr.G.Karuppasamy Pandiyan
For Respondent	: Mr.A.Robinson, Government Advocate(Crl. Side).

ORDER

Heard the learned counsel appearing for the petitioners and the learned Government Advocate(Crl. Side) appearing for the respondent.

2. The respondent registered the case in Crime No.212 of 2005 against Veludas, Thulasidas and Krishnadoss for the offences under Sections 452, 324, 326 and 307 of I.P.C. The defacto complainant is P.W.1 Udhayabanu. The respondent conducted investigation and filed final report before the Judicial Magistrate No.I, Nagercoil and the same was committed to the Sessions Court and made over to the II Additional Assistant Sessions Judge, Nagercoil. The first accused Veludas had absconded. Therefore, the case was split up against the revision petitioners herein and taken up as S.C.No.50 of 2008. The charges were framed against the first petitioner for the offences under Sections 452, 324 and 326 of I.P.C. and the charges were framed against the second petitioner for the offences under Sections 452 and 326 of I.P.C. The petitioners denied the charges and claimed to be tried. The prosecution examined as many as 15 witnesses (P.W.1 to P.W.15) and also marked Ex.P.1 to Ex.P.19. M.O.1 to M.O.12 were



also marked. On the side of the accused, no one was examined. Ex.D.1 Wound Certificate of the first petitioner Thulasidas was marked. The learned trial Judge after a detailed consideration of the evidence on record convicted the petitioners herein for the offences with which they were charged. The trial Court sentenced the petitioners as follows:-

Rank of the Accused	Penal Provision u/s.	Punishment
A-1	452 of I.P.C.	To undergo two years Simple Imprisonment and levied with a fine of Rs.500/- and in default, to undergo one month Simple Imprisonment.
	324 of I.P.C.	To undergo two years Simple Imprisonment
	326 of I.P.C.	To undergo three years Simple Imprisonment and levied with a fine of Rs.500/- and in default, to undergo one month Simple Imprisonment.
A-2	452 of I.P.C.	To undergo two years Simple Imprisonment and levied with a fine of Rs.500/- and in default, to undergo one month Simple Imprisonment.
	326 of I.P.C.	To undergo three years Simple Imprisonment and levied with a fine of Rs.500/- and in default, to undergo one month Simple Imprisonment.

Aggrieved by the same, the revision petitioners filed C.A.No.53 of 2010 before the learned Sessions Judge, Magalir Fast Track Court, Nagercoil. The appellate Court modified the conviction and sentence as mentioned below:-

Rank of the Accused	Penal Provisions u/s.	Punishment
A-1	324 of I.P.C.	Acquitted.
A-1 & A-2	452 of I.P.C.	To undergo one year Simple Imprisonment each and levied with a fine of Rs.1,000/- each and in default, to undergo one month Simple Imprisonment each.
	326 of I.P.C.	To undergo two years Simple Imprisonment each and levied with a fine of Rs.1,000/- each and in default, to undergo one month Simple Imprisonment each.

Challenging the same, this criminal revision case came to be filed.



3. Mr. G. Karuppasamy Pandiyan, learned counsel primarily contended that the first petitioner had suffered a grievous injury on his head and that a counter First Information Report was lodged in Crime No. 213 of 2005 on the file of the respondent and that the said case was investigated. But then, it ended in acquittal in S.C.No.116 of 2006 on the file of the Sessions Court, Nagercoil. The learned counsel drew my attention to PSO 588-A and placed reliance on the decision of the Hon'ble Supreme Court reported in (1990) Sup SCC 145 (Nathi Lal V. State of Uttar Pradesh). He pointed out that the investigation officer after conducting the investigation ought to have followed the procedure set out in PSO 588-A. P.S.O.588A reads as follows:-

"In a complaint and counter complaint arising out of a same transaction, the investigation Officer has to enquire into both of them and adopt one or the other of the two courses, namely, (1) to charge the case where the accused were the aggressors or (2) to refer both the cases if he finds them untrue. If the Investigation Officer finds that either of the course is difficult, he should seek the opinion of the Public Prosecutor and act accordingly. A final report should be sent in respect of the case referred as mistake of law and the complainant or the counter-complainant, as the case may be, should be advised about the disposal by a notice in Form-96 and to seek remedy before the specified Magistrate if he is aggrieved by the disposal of the case by the police."

4. The Hon'ble Supreme Court in Nathi Lal V. State of Uttar Pradesh ((1990) Sup SCC 145) held as follows:-

"2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case



without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other."

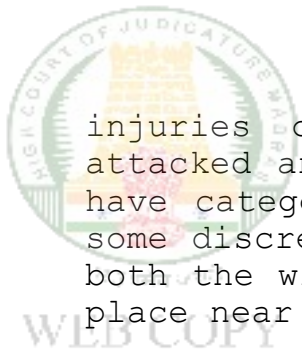
5. In the case on hand, it is true that the case against the petitioners herein was taken up by the II Additional Assistant Sessions Judge, Nagercoil, while the case against the accused in Crime No.213 of 2005 was taken by the Sessions Judge, Nagercoil, that is by two different Courts. No doubt, the contention advanced by the learned counsel appearing for the petitioners is formidable. But then, as rightly pointed out by the learned Government Advocate (Crl. Side), this submission cannot be accepted for the following two reasons:-

a) Non-observance of the procedure laid down in PSO 588-A cannot be said to vitiate the proceedings. This is because PSO 588-A is only an administrative consideration as held by this Court vide Order dated 19.11.2019 in Crl.O.P.(MD)No.4424 of 2017.

b) There can be no doubt that the procedure laid down in Nathi Lal case ought to have been followed. But then, nothing prevented the accused from filing an application either before this Court or before the Principal Sessions Judge for trying both the cases together. If both the cases had been taken up by the very same Court, the very same Judge could have pronounced the Judgments in both the cases. The accused appears to have taken a chance. They have not shown as to how miscarriage of justice has occurred to them. The accused cannot be allowed to take advantage of their own default. Having failed to move at the appropriate time for taking both the cases together, it is not now open to the learned counsel to contend that the separate trial and pronouncement of Judgments by two different Courts has caused miscarriage of justice.

6. The learned counsel appearing for the petitioners contended that the prosecution has not explained the grievous injury suffered by the first petitioner. He would contend that the genesis of the case has been suppressed. There is absolutely no merit in this contention. As rightly pointed out by the learned Government Advocate(Crl. Side), by filing a positive final report in Crime No.213 of 2005 registered at the instance of the revision petitioners, the police have left it to the Court concerned to decide the issue. Therefore, the petitioners' counsel is not right in his contention that the prosecution has suppressed the genesis of the case.

7. Before the trial Court, the injured witnesses have been examined. The first petitioner herein is said to have caused



injuries only on P.W.1. The second petitioner Krishnadoss had attacked and caused injuries on P.W.2. Both the injured witnesses have categorically deposed before the Court below. Though there is some discrepancy with the Wound Certificate, there is no doubt that both the witnesses have suffered injuries. The occurrence had taken place near the house of P.W.4 Velayuthampillai.

8. The learned trial Judge after a careful consideration had come to the conclusion that the prosecution had established its case against the petitioners beyond reasonable doubt. The petitioners partly succeeded before the appellate Court. I am satisfied that the conviction imposed on the petitioners does not warrant any interference. But then, the learned counsel pointed out that the petitioners herein are employed in TNSTC, a Government undertaking. He wanted this Court to give them some direction regarding their career and service. He pointed out that the primary culprit appears to be only the first accused Veludas. He was running a Chit group and he needs to pay a sum of Rs.15,000/- to P.W.1. On account of non-payment of the said amount, the occurrence had taken place. The petitioners herein are brothers of the absconding accused. He also submitted that the occurrence had taken place way back in the year 2005. More than 15 years have gone by. The petitioners herein do not have any bad antecedents. Subsequent to the occurrence, they have not come under any adverse notice. They are having their own families. On account of this conviction, they will lose their jobs and they will face severe hardships and certain ruin. Therefore, they wanted this Court to take an indulgent view by invoking the provisions of Probation of Offenders Act. The learned counsel appearing for the petitioners further undertakes that the petitioners herein would remit a sum of Rs.15,000/- (Rupees Fifteen Thousand only) (Rs.7,500/- each) to the credit of S.C.No.50 of 2008 on the file of the II Additional Assistant Sessions Judge, Nagercoil. The said amount can be withdrawn by P.W.1. He seeks six weeks time to make such a deposit.

9. Taking note of the overall submissions made by the learned counsel appearing for the petitioners, even while confirming the conviction against the petitioners and taking note of the fact that they had been in incarceration for about 18 days, the sentence is reduced to the period already undergone by them.

10. I invoke Section 12 of the Probation of Offenders Act, 1958 in favour of the petitioners. Even though they have been found guilty of the offences in question, I am of the view that they shall not suffer any disqualification on account of conviction of the offences. In other words, the petitioners' service and career will not in any way be affected by the outcome of this criminal revision case. In other words, the employer of the revision petitioners herein will not take any action whatsoever by citing this conviction. Of course Section 4 of the Probation of Offenders Act,



1958 contains certain formalities. But it is not necessary to apply it here. This Court can very well take note of the fact that the petitioners are having a regular occupation in view of they are being in service under TNSTC. Therefore, there is no need to call for any report from the Probation Officer.

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11. The petitioners shall deposit a sum of Rs.15,000/- (Rupees Fifteen Thousand only) (Rs.7,500/- each) to the credit of S.C.No.50 of 2008 on the file of the II Additional Assistant Sessions Judge, Nagercoil, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, P.W.1 can withdraw the said amount without notice to the petitioners herein.

12. This criminal revision stands partly allowed.

Sd/-

Assistant Registrar(T & P)

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Sub Assistant Registrar(CS)

pmu

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 Magalir Fast Track Judge, Nagercoil.
2. The II Additional Assistant Sessions Judge, Nagercoil.
3. The Inspector of Police, Rajakkamangalam police station, Nagercoil, Kanniyakumari District.
4. The Section Officer, Criminal Section, Madurai Bench of Madras High Court, Madurai.(2 Copies)
5. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

Crl. R.C.(MD)No.653 of 2016
09.12.2020

KMV(CO)

TR(30.12.2020) 6P 7C