



BAIL SLIP

The Appellants/Petitioner/Accused No.1 namely Muthulakshmi D/o.Kulandaisamy Gounder female aged about 45 years was directed to be released on bail as per the order of this Court dated 16.07.2018 made in Crl.Mp.No.9320/2018 in Crl.Rc.No.822/2018 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.822 OF 2018

Muthulakshmi

... Petitioner/Accused No.1

.Vs.

The State represented by,
The Inspector of Police,
District Crime Branch, Erode.
Crime No.19 of 2012.

... Respondent/Complainant

PRAYER:

This Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.C to call for the records and to set aside the order passed in Crl.A.No.300 of 2017, on the file of the learned II Additional District & Sessions Judge, Erode, dated 27.03.2018, confirming the judgment of the learned Chief Judicial Magistrate, Erode, passed in C.C.No.669 of 2013, dated 31.10.2017 and to acquit the petitioner from all the charges.

For Petitioner : Mr.K.Elangovan

For Respondent : Mr.S.Vinoth Kumar
Public Prosecution



O R D E R

This Criminal Revision Case is filed challenging the order passed in Crl.A.No.300 of 2017, by the learned II Additional District & Sessions Judge, Erode, dated 27.03.2018, confirming the judgment of the learned Chief Judicial Magistrate, Erode, passed in C.C.No.669 of 2013, dated 31.10.2017.

2(i).The case of the prosecution is that the revision petitioner/A1 was the wife of the defacto complainant/PW1 and due to disputes, they obtained divorce on 19.03.2010 and she was using the Maruthi Car bearing Registration No.TN 33 AK 3737, even from the period prior to obtain divorce. One Sekar was the car driver. After the grant of divorce on 19.03.2010, when PW1 requested the petitioner/A1 and the said Sekar to handover possession of the car on 01.04.2010, they have stated that the vehicle RC was transferred to the name of the revision petitioner/A1 and on enquiry it was found that the transfer was effected on 01.10.2009 by forging PW1's signature in TO Form. Hence, PW1/de-facto complainant has preferred a complaint under Section 156(3) on 19.03.2012 and the same was forwarded to the respondent police for investigation and a case was registered in Crime No.19 of 2012 and on investigation, charge sheet laid against the revision petitioner/A1 and the said Sekar for the offence under Sections 120(B), 468, 471, 109 of IPC.

2(ii).The said case was taken up on file as C.C.No.669 of 2013, before the learned Chief Judicial Magistrate, Erode and by an order dated 27.03.2018, the learned Judge has acquitted A2 and convicted the first accused for the offence under Sections 120(B), 468, 471 of IPC and imposed the sentence as follows:

(i)for the offence under Section 120(B) of IPC, the learned Judge has imposed three months rigorous imprisonment;

(ii)for the offence under Section 468 of IPC, the learned Judge has imposed two years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo two months rigorous imprisonment

(iii)for the offence under Section 471 of IPC, the learned Judge has imposed two years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo two months rigorous imprisonment and directed the above sentences to run concurrently.



2(iii).Aggrieved against the said order of conviction and sentence, the revision petitioner/A1 has filed an appeal in CrI.A.No.300 of 2017 before the learned II Additional District and Sessions Judge, Erode. By an order dated 31.10.2017, the learned Judge has confirmed the conviction and sentence passed by the Trial Court and dismissed the said appeal. Hence, the Criminal Revision Case.

3.Heard Mr.K.Elangovan, learned counsel for the revision petitioner and Mr.S.Vinoth Kumar, learned Public Prosecutor for the respondent police and perused the materials placed on record.

4.The learned counsel for the revision petitioner would submit that the Trial Court laid the conviction based upon Ex.P4/Forensic Science Report and challenged the handwriting report given by PW5/Deputy Director of Forensic Department on two grounds:

(i) A sample signature of PW1 was not obtained in the manner as prescribed under Section 311(A) of Cr.P.C.;

(ii) Sample signatures of PW1 was taken at the police station since it was not obtained before the Magistrate after obtaining necessary orders and the same is vitiated.

and relied upon the decisions reported in

(i)CDJ 2008 MHC 6954 - K.Sankaranarayanan Vs. Special Police Establishment CBI, Madras

(ii)CDJ 2014 MHC 2866 - Dr.MCR. Vyas & Others Versus The Inspector of Police, CBI Anti Corruption Branch and contended that the sample signatures viz., S1 to S39, said to have been obtained by the investigating officer in the police station, have been compared by PW5, who has issued Ex.P4, is vitiated for non observance of procedure contemplated under Section 311(A) of Cr.P.C.

5.Per contra, the learned Public Prosecutor appearing for the respondent would rely upon the Section 311(A) of Cr.P.C, which reads as follows:

311-A. Power of Magistrate to order person to give specimen signatures or handwriting.- If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceedings under this Code,





suppressing truth. From the version of the PW3/independent witness, I find that the suggestive case of the defence is more probable than the prosecution case for more than two reasons.

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9. Firstly, the relationship between the parties are as that of the husband and wife. The Panchayat conducted by the elders of the parties regarding the divorce proceedings, has been clearly spoken and admitted by PW3/independent witnesses. Based upon the Form-19, which was issued in the presence of the Panchayatdharas, the revision petitioner/A1 has presented a paper for change of name which is marked as Ex.P3. All the documents viz., A1, A2, S1 to S39, Q1 & Q2, which were given to the police are subsequent to the disputed signature as extracted above. The disputed signature is dated 30.09.2009. Here in the instant case all the documents are subsequent to the disputed signature. Besides a specific stand taken by the defence is that the accused is in the habit of signing the signatures differently in different occasions.

10. In order to substantiate the suggestive case of the defence, in the very same Calender Case PW1 has applied for certified copies of the documents filed by the police, in which he has filed affidavit and vakalath. The signature in the vakalath is marked as Ex.R1 while the signature in the affidavit if found to be totally different. This Court has also compared the signature found in affidavit viz., Ex.R1/vakalath and signature of PW1 for the vakalath given to the advocate and these signatures also stand differed with the sample signature.

11. Admittedly, the Investigating Officer has not taken steps to compare the the signature found in the RC book, which was marked as Ex.P2, rather than he has chosen to go by sample signature given before the police, which is much later in point of time, assumes significance.

12. Since the conviction and sentence passed by the Trial Court is solely based upon Ex.P4/Forensic Report, I find that in view of the infirmity noted above the same is not sustainable, besides taking into consideration the fact that the case of the prosecution has not been proved beyond reasonable doubt.

13. Per contra, the revision petitioner/accused as successfully demonstrated that the suggestive case is more probable besides relationship between the parties.

14. Accordingly, this Criminal Revision Case stands allowed and the order of conviction and sentence passed in CrI.A.No.300 of 2017, by the learned II Additional District & Sessions Judge, Erode, dated 27.03.2018, confirming the judgment of the learned



Chief Judicial Magistrate, Erode, passed in C.C.No.669 of 2013, dated 31.10.2017, is hereby set aside.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District & Sessions Judge, Erode.
2. The Principal Sessions Judge, Erode.
3. The Chief Judicial Magistrate, Erode.
4. The Inspector of Police,
District Crime Branch,
Erode.
5. The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
Criminal Section, High Court,
Madras.

+2ccs to Mr.K.Elangovan, Advocate, S.R.No.56442

Cr1.RC.No.822 of 2018

PCH(CO)
PM/20/01/2022