



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Appellate Jurisdiction)

Wednesday, the Fifth day of August Two Thousand and Twenty
PRESENT

The Hon'ble Mr Justice B.PUGALENDHI
CRL A(MD). No.137 of 2015

and

Suo motu CRL RC(MD).No.248 of 2015

Nagarajan ...Appellant/Sole Accused in both cases
Vs

State rep. By The Inspector of Police,
Kannivadi Police Station, Dindigul District.
(in Crime No.239 of 2003) ...Respondent/Complainant in both cases

Prayer in CRL A(MD). No.137 of 2015:-

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, praying this Hon'ble Court to call for records and set aside the order of conviction and sentence dated 29.05.2015 made in S.C.No.54 of 2007 on the file of the Magalir Neethimandram (Fast Track Mahila Court), Dindigul.

Prayer in CRL RC(MD). No.248 of 2015 :-

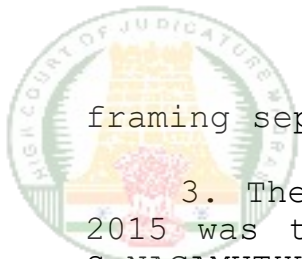
Criminal Revision case filed under Section 397 read with 401 of Criminal Procedure Code, praying this Hon'ble Court to set aside the judgment dated 29.05.2015 made in S.C.No.54 of 2007 on the file of the Sessions Judge (Mahila Court), Fast Track Court, Dindigul.

ORDER:-

These Cases are coming on for hearing on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. G.Karuppasamy Pandian, Advocate for the Appellant in both cases and of Mr. A.Robinson, Government Advocate(Criminal Side) on Behalf of the Respondent in both cases, this Court made the following order:

The Criminal Appeal in Crl.A.(MD)No.137 of 2015 is filed by the accused as against the order of conviction passed by the trial Court, namely, Magalir Neethimandram, Fast Track Mahila Court, Dindigul, in S.C.No.54 of 2007, dated 29.05.2015.

2. Mr.G.Karuppasamy Pandian, learned Counsel for the appellant would submit that though the trial Court has framed the charge under Section 306 IPC, after full fledged trial, the trial Court has acquitted the appellant from the said charge. However, the trial Court has found the appellant guilty for the offence under Sections 354 & 448 IPC, without framing any charge under these sections. Though the offence under Sections 354 & 448 IPC are lesser offences than that of the offence under Section 302 IPC, the ingredients for the offence under Sections 302, 354 & 448 IPC are different and therefore, the trial Court is not justified in convicting the appellant for the offence under Sections 354 & 448 IPC, without



framing separate charges for the said offence.

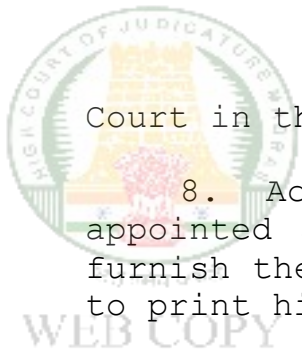
3. The Criminal Revision Case in *Suo Motu* Crl.RC.(MD)No.248 of 2015 was taken on file based on the orders of Hon'ble Mr.Justice S.NAGAMUTHU, while deciding the petition filed by the appellant for suspension of sentence. As per the directions of the Court, the Assistant Registrar (Crl. Side) filed *Suo Motu* Crl.RC.(MD)No.248 of 2015 under Section 397 r/w 401 Cr.P.C., as against the judgment of acquittal in S.C.No.54 of 2007, dated 29.05.2015, insofar as the offence under Section 306 IPC is concerned.

4. With regard to this Criminal Revision Case, Mr.G.Karuppasamy Pandian, learned Counsel would submit that this *suo motu* revision case is an abuse of process of Court. He would further submit that the Appellate Court, exercising power under Section 374 Cr.P.C., deciding a petition for suspending the sentence under Section 389 Cr.P.C., is not entitled to take up a case on a revisional jurisdiction, which is not vested with the Court at the relevant point of time. On this aspect, the learned Counsel sought time to work out the propositions of law and to make his further submissions in this regard.

5. Mr.A.Robinson, learned Government Advocate (Crl. Side) would submit that though the charge was made under Section 306 IPC, the accused was found guilty and convicted for the offence under Sections 354 & 48 IPC, which are lesser offences than that of the offence under Section 302 IPC. Therefore, the trial Court is justified in passing an order of conviction as against the accused, even though no specific charge has been framed and it can be sustained.

6. With regard to the *suo motu* criminal revision case, the learned Government Advocate (Crl. Side), by relying upon the decisions in ***Popular Muthiah v. State*** and in ***Katturaja v. State*** [(2013) 2 CTC 72], submitted that the Court hearing an appeal under Section 374 Cr.P.C., is also having the power under Section 482 Cr.P.C., to issue necessary directions and accordingly, in these two cases, the Court, which was hearing on appellate jurisdiction, has passed a similar such direction to take up the case for further investigation and for re-trial. Therefore, the order passed by this Court, by invoking the powers under Section 482 Cr.P.C., while dealing with an appeal, is justified and on the directions of the Court, the Registry has filed this *suo motu* criminal revision case under Section 397 r/w 401 Cr.P.C.

7. Since the learned Counsel for the accused has raised a legal question with regard to the competence of this Court in taking up a *suo motu* criminal revision case as against the order of an acquittal, while dealing with an appeal under Section 374 Cr.P.C., this Court deems it fit to appoint an *Amicus Curie* to assist the



Court in this matter.

8. Accordingly, Mr.A.Thiruvadi Kumar, learned Counsel, is appointed as *Amicus Curie* in this matter. Registry is directed to furnish the typed set of papers to the learned *Amicus Curie* and also to print his name in the cause list.

9. Post these matters on **21.08.2020**.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gk

TO

- 1 The Sessions Judge (Mahila Court),
Fast Track Court, Dindigul.
- 2 The Inspector of Police, Kannivadi Police Station,
Dindigul District.
- 3 The Additional Public Prosecutor, Madurai Bench of Madras
High Court, Madurai

Copy to:

- 1 Mr. A.Thiruvadikumar, Amicus Curie,
No.2/456-1, Pandiyan Street,
Gomathipuram 6th Main Road,
Madurai - 625 020. (Mobile No.94432 41927)
- 2 The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai
(To furnish the typed set of papers to the learned amicus
curie and List the matter on 21/08/2020)

crl A(MD) No.137 of 2015
and
Crl.RC(MD) No. 248 of 2015
05.08.2020

KB(17.08.2020) 3P 6C