

**BAIL SLIP**

The Appellant/Accused viz E. JayakumarS/o.Eswaramoorthy aged about 37 years was directed to be released on bail as per order of this court dated 25/02/2016 made in CRL.MP.(MD). Nos 1725 and 1726 of 2016 in CRL.RC(MD).No.106/2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	12.02.2021
DELIVERED ON	22.02.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI
Cr1.RC(MD)No. 106 of 2016

E. Jayakumar ...Petitioner/Appellant/Sole accused

Vs.

State,
rep. By Sub-Inspector of Police,
Aravakurichi Police Station,
Karur District.

(Crime No. 291 of 2005) ...Respondent/Respondent/Complainant

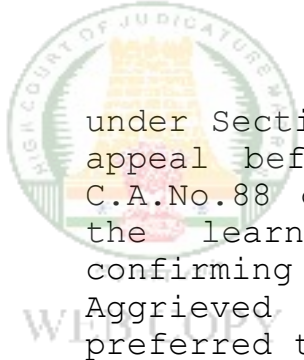
PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Karur in Crl.A. No. 34 of 2014 by Judgment, dated 30.11.2015, confirming the conviction and sentence imposed by the learned Judicial Magistrate No.II, Karur in C.C. No.251 of 2006 by the Judgment, dated 07.08.2014 and set aside the Judgment of the Courts below.

For Petitioner : Mr.K.K. Senthil Velan
For Respondent : Mrs. M. Anantha Devi
Government Advocate (crl. Side)

O R D E R

This Criminal Revision Case has been filed by the petitioner/sole accused as against the conviction and sentence passed by the learned Judicial Magistrate No.II, Karur, in C.C.No. 251 of 2006, dated 07.08.2014, confirmed by the learned Sessions Judge, Mahalir Neethimandram (Fast Tack Mahila Court), Karur in C.A.No. 34 of 2014, dated 30.11.2015.

2. The revision petitioner was tried for the offences under Sections 279 and 304(A) (2 counts) IPC, before the learned Judicial Magistrate No.II, Karur, and the trial Court, in conclusion of the trial, found him guilty, convicted and sentenced to undergo simple imprisonment for three months for the offence under Section 279 of IPC and to undergo simple imprisonment for One year for the offence



under Section 304(A) (2 counts) of IPC. The petitioner preferred an appeal before the Court of Sessions and the same was taken in C.A.No.88 of 2015 and was dismissed by order, dated 04.07.2016 by the learned III Additional District Judge, Tiruchirappalli, confirming the conviction and sentence imposed by the trial Court. Aggrieved by the orders of the Courts below, the petitioner has preferred this revision case.

3. The brief fact of the case is that on 29.10.2005, at about 10.30 P.M., near Thada Kovil bus stop, Karur - Dindigul NH-7 bye-pass road, at that time a lorry bearing Regn. No.TN-28-Q-0525 driven by the petitioner in north to south direction with loaded eggs in a rash and negligent manner, while trying to overtake the lorry loaded with paper bearing regn. no. KA-01-AC-4559 and directly dashed a Eicher lorry bearing regn. no.TN-33-X-9394 came from south to north, fire accident was happened. In the said accident, the victims Saravanan and Selvam who travelled in Eicher lorry sustained burn injuries and died on the spot. Based on the complaint given by PW1, the case in Crime No.291 of 2005 was registered by the respondent Police for the offence under Sections 279 & 304(A) (2 counts) of IPC. The respondent Police, after investigation, has filed the final report and both the Courts below have convicted the petitioner/accused as stated supra.

4. The learned Counsel for the revision petitioner submitted that there are material contradictions with regard to the prosecution witnesses and the versions on the exhibits. He further submitted that the Courts below convicted the petitioner based only on the presumption and assumption. He further submitted that the Courts below failed to see the evidence of P.W.11, he categorically made that the accident was happened due to the fault of the either vehicle. He further submitted that the Courts below failed to consider the Ex.P.9, M.V. Report and ought to have acquitted the petitioner. The respondent police not proved the guilt beyond reasonable doubt. He further submitted that the Courts below clearly admits the fact that none of the evidence said that the accident was made due to the rash and negligent driving of the petitioner, even then, the Courts below convicted the petitioner only on presumption. He further submitted that the reasons assigned by the Courts below for convicting the petitioner/accused is not sustainable and is liable to be set aside. He prayed to allow the Criminal Revision Case.

5. Per contra, the learned Government Advocate (Crl. Side) submitted that the accident was happened due to the rash and negligent driving of the petitioner/accused. She further submitted that the minor discrepancies in the evidence of prosecution is not material contradiction. She further submitted that the prosecution has proved the case against the appellant beyond reasonable doubts and therefore, she prays for dismissal.

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

6. Heard the learned counsel for the petitioner and the



learned Government Advocate (crl. Side) for the respondent police and perused the material documents available on record.

7. The petitioner/accused has filed this Criminal revision case to set aside the conviction and sentence passed by the learned Judicial Magistrate No.II, Karur in C.C. No.251 of 2006, dated 07.08.2014, confirmed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Karur in CrI.A. No. 34 of 2014, dated 30.11.2015.

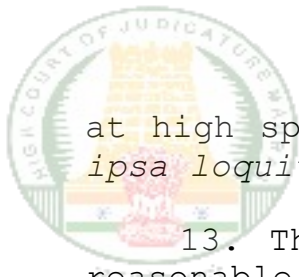
8. The petitioner/accused was charged under Section 279 and 304 (A) (2 counts) of IPC, convicted and sentenced to undergo simple imprisonment for three months for the offence under Section 279 of IPC and to undergo simple imprisonment for One year for the offence under Section 304(A) (2 counts) of IPC., by the trial Court and the same was confirmed by the Appellate Court.

9. The driver of paper loaded lorry was examined as P.W.1. He deposed that egg loaded lorry overtook his vehicle collide with the Eicher lorry. Due to friction both the vehicle got fire and also the paper loaded lorry. P.W.1 is the eye witness, but never deposed about the rash and negligent manner of the petitioner/accused. The cleaner of the lorry was examined as P.W.2 and he also corroborated the evidence of P.W.1. P.W.2. An eye witness of the accident was examined as P.W.3. He has also turned as hostile. P.W.4 to P.W.8 are stated to be eye witnesses. But in their cross examination, they stated that they saw after accident was occurred.

10. Referred from 313 of Cr.P.C., question, P.W.4 has also not stated anything about rash and negligence manner of the accused. As per rough sketch prepared by the respondent police clearly revealed that the vehicle bearing regn. no. TN-28-Q-0525 drove by the petitioner/accused from north to south on the left side of the road and the Eicher lorry only shown in the middle of the road.

11. As per prosecution case, the lorry bearing regn. no.TN-28-Q-0525 drove by the petitioner/accused overtook the paper loaded lorry and collided with Eicher lorry. But, in the rough sketch the occurrence place was mentioned as behind the paper loaded lorry. Neither documentary nor oral evidence to prove the rash and negligence of the driver.

12. The Judgment reported in **2017(1) LW Cri. 160, M. Subramani Vs. State, rep. By Inspector of Police, Edapadi Police Station, Salem District and 1998 (8) SCC, 493, Hon'ble Apex Court**, held that the respondent found guilty for the offences under Sections 337, 338 & 304(A) of IPC., after recording finding that the respondent was driving the truck at "high speed". No specific finding has been rendered either by the trial Court or by the Appellate Court to the effect that the respondent was driving the truck either negligently or rashly. After holding that the respondent was driving the Truck



at high speed both the Courts pressed into aid the doctrine of *res ipsa loquittur* to hold the respondent guilty.

13. Therefore, the prosecution has not proved the case beyond reasonable doubt. Both the Courts below erred in giving the findings and hence, this Court is not inclined to allow this revision petition.

14. In view of the above discussions and considering the totality of the circumstances, this Court is of the view that the conviction and sentence on the petitioner/accused cannot be sustained and the same warrants interference. Accordingly, the conviction and sentence passed by the learned Judicial Magistrate No.II, Karur in C.C. No.251 of 2006, dated 07.08.2014, confirmed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Karur in Crl.A. No. 34 of 2014, dated 30.11.2015, is set aside and the petitioner/ accused is acquitted of the charge framed against him and bail bonds, if any executed, shall stand terminated.

15. In fine, this Criminal Revision Case is allowed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.II, Karur

3.Do Thro The Chief Judicial Magistrate,Karur.

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

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



6. The Section Officer, Criminal Section, (2C)
Madurai Bench of Madras High Court,
Madurai.

Crl.RC (MD) No.106 of 2016
22.02.2021

WEB COPY

SV2 (CO)

KB(01.03.2021) 5P 8C