

**Bail Slip**

The Appellant/Sole Accused Marimuthu, S/o.Maduraiveeran, was directed to be released on bail order of this Court date 30.11.2016 made in CRL RC(MD) No.11855 of 2016 in Cr1 RC(MD) No.812 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	29.03.2021
DELIVERED ON	22.04.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI**Cr1.RC(MD)No. 812 of 2016**

Marimuthu ... Revision Petitioner /Appellant/Accused

Vs.

State rep. By the Sub-Inspector of Police,
Koomapatti Police Station,
in Crime No. 96 of 2008],
Virudhunagar District ... Revision Respondent/Respondent/
Complainant

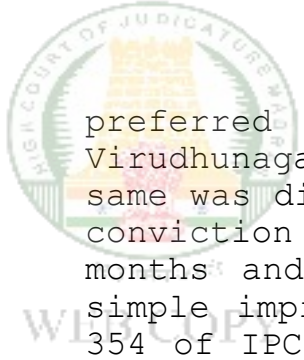
PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records from the Lower Courts and set aside the Judgment of the Appellate Court passed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputtur in C.A. No. 29 of 2009 dated 22.04.2015 confirming the Judgment of the learned Judicial Magistrate No.I, Sirivilliputtur, Virudhunagar District in C.C. No. 43 of 2008 dated 02.02.2009 by allowing this Revision.

For Petitioner : Mr.S. Maya Perumal
For Respondent : Mrs.M. Anantha Devi
Government Advocate (crl.side)

ORDER

This Criminal Revision Case has been filed by the revision petitioner to set aside the Judgment, dated 22.04.2015 passed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputtur in C.A. No. 29 of 2009 confirmed the Judgment, dated 02.02.2009 passed by the learned Judicial Magistrate No.I, Sirivilliputtur, Virudhunagar District in C.C. No. 43 of 2008.

2. As against the judgment of conviction and sentence passed by the learned Judicial Magistrate No.I, Sirivilliputtur, Virudhunagar District, in C.C.No.43 of 2008, dated 02.02.2009, the petitioner has



preferred an appeal before the learned Principal Sessions Judge, Virudhunagar District at Srivilliputtur in C.A. No.29 of 2009 the same was dismissed for default by Judgment dated 22.04.2015, and the conviction and sentence to undergo rigorous imprisonment of Three months and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for Three months for the offence under Section 354 of IPC, was confirmed. Aggrieved over the same, the petitioner has preferred the instant criminal revision case.

3. The case of the prosecution is that, on 23.05.2008 at 24.00 hrs., while P.W.1/Pavithra was sleeping in her house along with her mother P.W.2/Sundarammal, this petitioner outraged her modesty by caught hold of her hand and thereby teased her. Based on a complaint, a case in Crime No.96 of 2008 for the offence under Section 354 of IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 1988 was registered by the Sivagangai Town Police station.

4. The learned Counsel for the revision petitioner submitted that the Appellate Court disposed the Appeal as "Appeal is dismissed for default" on the date of hearing, the revision petitioner was absent before the Appellate Court due to illness and the petitioner's counsel is also not appeared before the date of hearing and their absence is neither willful nor wanton. He further submitted that the learned trial Judge not considered the evidence of P.W.2 and P.W.3 and their evidence is not reliable because they are father and mother of the P.W.1, who is victim in this case and they are interested witness in this case. He further submitted that the Appellate Judge disposed the appeal without hearing the argument by counsel of the Appellant and it is against the principles of natural Justice and hence, the Criminal Revision case is liable to be allowed .

5. Per contra, the learned Government Advocate (Crl. Side) submitted that the occurrence took place on 23.05.2008 at 24.00 hrs., while P.W.1 was sleeping in her house along with P.W.2. She further submitted that during the evidence of P.W.1 in her chief examination has categorically asserted that the occurrence took place on 23.05.2008 at 12.00 p.m, while she was sleeping with her mother and her evidence is further corroborated by P.W.2 who has also deposed that the occurrence took place on 24.05.2008 at night while, she was sleeping with P.W.1. She further submitted that the evidences of P.W.1 & P.W.2 would make it very clear that the prosecution has clearly established the date, time and place of the occurrence. Hence, therefore, she prays for dismissal.

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/appellant/accused has filed this Civil Revision Petition to set aside the Judgment, dated 22.04.2015 passed



by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputtur in C.A. No. 29 of 2009 confirmed the Judgment, dated 02.02.2009 passed by the learned Judicial Magistrate No.I, Sirivilliputtur, Virudhunagar District in C.C. No. 43 of 2008.

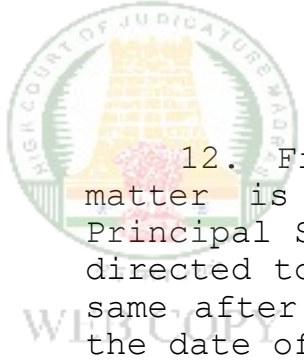
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8. It is seen from the records that the revision petitioner was charged for an offences under Section 354 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. After full-fledged trial, the revision petitioner found guilty for an offence under Section 354 of IPC and not found guilty for an offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. The revision petitioner was convicted and sentenced to undergo rigorous imprisonment of Three months and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for Three months for the offence under Section 354 of IPC and not found guilty under Section 4 of Tamil Nadu Prohibition of Harassment Act and acquitted from the said charge under Section 248(1) of Cr.P.C.

9. Against the conviction and sentence the revision petitioner has preferred an appeal in C.A. No. 29 of 2009 on the file of the learned Principal Sessions Judge, Virudhunagar District at Srivilliputtur which was dismissed for default on 22.04.2015. The Appellate Court ought to have considered the merits of the case on perusal of records and pass order even the appellant was not appeared.

10. As per Judgment reported in **1996 (4) Supreme Court Cases, 720, Bani Singh and Others Vs. State of U.P.**, the law does not enjoin that the Court shall adjourn the case if both the appellant and his lawyer are absent. If the Court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the Judgment of the trial Court. If the accused is in jail and cannot, on his own, come to Court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the accused/appellant if his lawyer is not present. If the lawyer is absent, and the Court deems it appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so. Even if a case decided on merits in the absence of the appellant, the higher Court can remedy the situation if there has been a failure of justice. This would apply equally if the accused is the respondent for the obvious reason that if the appeal cannot be disposed of without hearing the respondent or his lawyer, the progress of the appeal would be halted.

11. Taking note of the facts and circumstances of this case, it would appropriate to pass an order to remit the matter to the Court below for deciding the issue.



12. Finally, the Criminal Revision Case is allowed and the matter is remitted back to the Appellate Court. The learned Principal Sessions Judge, Virudhunagar at Srivilliputtur District is directed to reopen the appeal in C.A. No.29 of 2009 and dispose the same after full-fledged trial, within a period of Four months from the date of receipt of copy of the order.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

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 Judicial Magistrate No.I,
Sirivilliputtur, Virudhunagar District.
2. The Principal Sessions Judge,
Virudhunagar District at Srivilliputtur.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai. 2 Copies

Order made in
Crl.RC(MD) No.812 of 2016
22.04.2021

CN(17.05.2021) 4P 6C