



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.02.2021

Pronounced on : 17.04.2021

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**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

**CRL.RC (MD) .No. 155 of 2017**

Kasi : Petitioner / Appellant / A2

Vs.

The Inspector of Police,  
Anjugramam Police Station,  
Anjugrammam,  
Kanyakumari District,  
(Crime No. 98 of 2004)

: Respondent / Respondent complainant

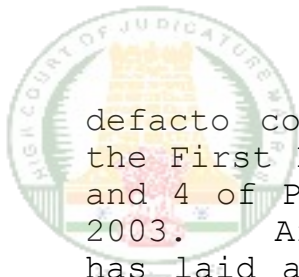
**PRAYER:-** Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the order dated 20.01.2017 in C.A.No. 232 of 2005 passed by the learned Sessions Judge, Mahila Fast Track Court, Nagercoil, Kanyakumari District modifying the order dated 14.09.2005 passed in C.C.No.118 of 2004 on the file of the learned Judicial Magistrate No.III, Nagercoil, Kanyakumari District.and set aside the same by allowing the Revision petition and acquit the revision petitioner.

For petitioner : Mr.L. George Paul Anto  
For respondent : Mr. V. Neelakandan  
Additional Government Pleader

**ORDER**

This Criminal Revision case is directed against concurrent Judgments of conviction passed in Cr.A.No. 232 of 2005, dated 20.01.2017 on the file of the Mahila Fast Track Court, Nagercoil, Kanyakumari District confirming the Judgment made in C.C.No.118 of 2004, dated 14.09.2005 on the file of the Court of Judicial Magistrate No.III, Nagercoil, Kanyakumari District.

2. The revision petitioner is the second accused in C.C.No. 118 of 2004 on the file of the Court of the Judicial Magistrate No.III, Nagercoil. On the basis of the complaint lodged by the



defacto complainant Ramakrishnan, the respondent police registered the First Information Report in Crime No.98 of 2004 under Sections 3 and 4 of Prohibition of Charging Exorbitant Interest Ordinance Act, 2003. After completing the investigation, the respondent police has laid a final report against two accused including the revision petitioner for the offence under Sections 3 and 4 of Prohibition of Charging Exorbitant Interest Ordinance Act, 2003 and the same was taken on file in C.C.No.118 of 2004 on the file of the Court of the Judicial Magistrate No.III, Nagercoil.

3. During trial, the prosecution in order to prove its case has examined 9 witnesses as PW.1 to PW.9 and exhibited 5 documents as Exs. P1 to P5. The accused have adduced neither oral nor documentary evidence.

4. The learned Judicial Magistrate, upon considering the evidence adduced and on hearing the arguments of both sides, passed the Judgment on 14.09.2005 convicting both the accused for the offence under Section 3 of Prohibition of Charging Exorbitant Interest Ordinance Act, 2003 and sentenced them to undergo Rigorous Imprisonment for one year and to pay a fine amount of Rs.1,000/- each in default to undergo 3 months Simple Imprisonment. Aggrieved by the said Judgment of conviction, both the accused have preferred the appeals in Cr.A.Nos.232 and 234 of 2005 and the learned Sessions Judge of Mahila Fast Track Court, Nagercoil, upon considering the materials and on hearing both the sides, has passed the impugned Judgment on 20.01.2017 confirming the conviction of the accused under Section 3 of Prohibition of Charging Exorbitant Interest Ordinance Act, 2003, but modified the sentence of imprisonment and sentenced both the accused to undergo one week Simple Imprisonment and confirmed the imposition of fine. Not satisfied with the said Judgment of conviction, the second accused has come forward with the present revision.

5. Admittedly, PW.3 Raju Velar is the husband of PW.2, Janaki and PW.1, the defacto complainant Ramakrishnan is the Son of PW.2 and PW.3. The case of the prosecution is that PW.3 in order to meet out the medical expenses of his wife PW.2, borrowed a sum of Rs.19,500/- from the first accused for interest at Rs.5/- per Rs.100/- per month and also borrowed a sum of Rs.3,000/- from the second accused for the interest at Rs.10/- per Rs.100/- per month, that he has been paying monthly interest at Rs.975/- and Rs.300/- to both the accused respectively for the two years since borrowal, that both the accused had taken signatures of PW.3 in the unfilled promissory note and in white papers, that on 12.03.2004 at 4.00 p.m, the accused came to PW.1 house and demanded and threatened to repay the principal amount and interest immediately, that since PW.2 who was in the house at that time has not paid the amount, both the accused had taken the household articles and PW.2 who was lying in the bed due to her ill health to the outside of the house and locked the house and taken away the key.



6. PW.3 in his evidence would say that he had taken a loan of Rs.19,500/- from the first accused and Rs.3,000/- from the second accused and that the interest agreed was at the rate of Five Paisa. As rightly contended by the revision petitioner side, PW.3 has not mentioned about the date or period of borrowal. PW.1 in his chief examination would say that his father had obtained a loan of Rs.19,500/- from the first accused for interest at Rs.5/-, that he was paying monthly interest at Rs.975/- and that the first accused had obtained signatures from his father. In cross examination, he would say that the second accused had also accompanied the first accused on the occurrence date and had taken the household articles for the interest amount. He would further say that his father had taken loan two years prior to the occurrence, but he was not aware of the same personally. He would admit that he has not produced any documents to show the alleged borrowal before the police and that he has not given anything in written with respect to the borrowal and the interest payments. PW.2 in her chief examination would say that she does not know the second accused Kasi and that she alone has been paying interest at Rs.975/- to the first accused. In cross examination she would say that she had obtained loan from the wife of first accused, that she was maintaining the particulars with respect to the borrowal and the interest payments and that she had obtained loan 4 years prior to the occurrence. She would admit specifically that she had obtained loan only from the first accused and that she has not paid any interest to the second accused.

7. No doubt, PW.4, who is residing nearby would depose about the alleged borrowal and the payment of interest to the accused. In Chief Examination PW.4 would say that PW.1 and PW.2 had taken loans of Rs.19,500/- from the first accused and Rs.3,000/- from the second accused, that the accused 1 and 2 were collecting interest at Rs.5/- paisa and Rs.10/- paisa respectively and that since PW.2 was in the hospital they could not pay the interest amount. But, in cross examination she would admit that she was not aware as to when and where PW.2 and PW.3 had taken loan from the accused and she was also not aware as to the dates on which interest amounts were paid. PW.8 Investigating Officer would admit in his cross examination that he has not produced any records to show the borrowal of loan and payment of interest and that he has not recovered the promissory notes or any other documents from the accused.

8. As rightly contended by the defence, there is absolutely no evidence to show that the second accused had advanced any loan to PW.3 or other members of PW.3's family and that the interest was paid to him. It is necessary to refer Sections 3 and 4 of the Tamil Prohibition of Charging Exorbitant Interest Ordinance Act, 2003



"3. Prohibition of charging exorbitant interest :  
No person shall charge exorbitant interest on any loan advanced by him.

4. Penalty - Notwithstanding anything contained in the money-lenders Act, whoever contravenes the provisions of section 3 or molests or abets the molestation of any debtor for recovery of any loan shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to thirty thousand rupees."

Section 2(3) defines "exorbitant interest", which means and includes daily vatti, hourly vatti, kandhu vatti, meter vatti and thandal as Sub Sections 4,5,7 and 9 define hourly vatti, kandhu vatti, meter vatti and Thandal respectively, and the same would mean interest which will work out to an interest rate more than that fixed by the Government under Section 7 of the Money Lenders Act.

9. PW.8 in his cross examination would admit that he has not produced the Reserve Bank Rules and Government Orders to show the rate of interest to be claimed at the relevant point of time.

10. Considering the above, as rightly contended by the defence, the prosecution has failed to prove that the second accused had advance loan to the family of PW.1 and claimed exorbitant interest from them. Regarding the occurrence allegedly held on 12.03.2004, the prosecution has examined PWs.2, 4 and 5 as occurrence witness. Admittedly, PW.5 has not supported the case of the prosecution and hence, she was treated as hostile by the prosecution. As rightly contended by the defence, though PW.5 was subjected to cross examination the prosecution has not elicited anything in their favour. The trial Court has rightly held that she was not the occurrence witness. PW.4 in her cross examination would only say that between 3.30 P.M., and 4.00 P.M., the first accused was found shouting in the house of PW.2, that she had returned to her home, that when she had visited PW.2 house at 5.30 p.m., she found that the household articles were placed outside the house and the house was locked and that the second accused had taken TV, Tape Recorder and cot in an Auto. PW.2 alleged to be the occurrence witness would say that the first accused, four or five months prior to her giving evidence before the Court, has taken the household articles and placed the same outside the house and got the house locked, that though the interest has to be paid on 17<sup>th</sup>, the accused had committed the above acts on 12<sup>th</sup> and that due to their acts she was forced to be on the road. Admittedly, PW.1 and PW.3 were not present in the house at the time of occurrence. It is pertinent to mention that PW.2 the only eyewitness to the occurrence has not whispered anywhere in her evidence that that the second accused Kasi had also accompanied the first accused at the

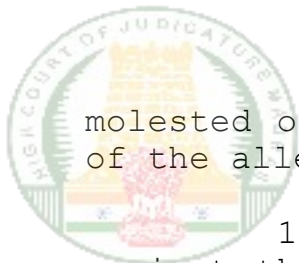


occurrence time and had also taken the household articles. As rightly contended by the defence, it is not the case of the prosecution that the second accused had taken TV, Tape recorder and cot through Auto.

11. It is the specific case of the prosecution that PW.1 came to the police station at about 8.00 P.M., on 13.03.2004 and lodged a complaint and on that basis First Information Report came to be registered. But PW.1 in his evidence would say that he had visited the police Station on that day itself and that the police officials directed him to come on the next day morning and accordingly, he visited the station at 10.00 a.m., and lodged a complaint. PW.8 would say that PW.1 came to the police Station only on 13.03.2004 at about 8.00 p.m., and that he had not visited the police station earlier.

12. It is the specific case of the prosecution that PW.8, after registration of the First Information Report, visited the occurrence place and inspected the scene of occurrence in the presence of PW.6 Lingesan and one Nagaraj and prepared the observation Mahazar under Ex.R4 and Rough Sketch under Ex.R5. But, PW.6 Lingesan, in his evidence, would only admit his signature found in the Observation Mahazar and hence, the signature alone was marked as Ex.P2. Hence, the prosecution has also treated PW.6 as hostile witness and subjected him to cross examination, but nothing was elicited in their favour. Though PW.6 had turned hostile, the prosecution has not chosen to examine the other witness Nagaraj. Considering the above, it is highly doubtful as to whether PW.8 had really visited the occurrence place and prepared the observation Mahazar and Rough Sketch. Though the prosecution had taken photographs, the same was not exhibited and the person who was running the studio was examined as PW.7, but he has also not supported case of the prosecution. Though the prosecution alleged that one Suresh who was working in the studio of PW.7 had taken the photographs, they have not chosen to examine him.

13. Moreover, PW.8 would say that on the date of registration of First Information Report, he examined PW.1 to PW.3 at the occurrence place, but PW.3 would say that he was in Trivandram on the date of occurrence and returned to Pullarkkulam one month after the alleged occurrence. Moreover, PW.1 would say that only after the intervention of the police, they were able to get the keys and that the police got the keys from the accused and handed over to him. As already pointed out, according to the prosecution, the complaint was received from PW.1 and the case was registered only on 13.03.2004 at about 8.00 p.m., and if that be so, it is not known as to when the police had got the keys from the accused and handed over the same to PW.1 so as to enable them to open the locked house. As rightly contended by the defence, there is absolutely no evidence to show that the second accused had



molested or abetted molestation of PW.1 to PW.3 for the recovery of the alleged loan.

14. No doubt, there is a concurrent verdict of conviction against the revision petitioner, I am aware that the jurisdiction of this Court under Section 397 and 401 Cr.P.C., is only confined to legality, propriety and correctness of the concurrent findings of conviction entered against the revision petitioner and that it is a supervisory jurisdiction which is exercised to correct the manifest errors in the orders of the Subordinate Courts but should not be exercised in a manner so as to change the revisional Court in to a Court of appeal.

15. No doubt, there is no scope for re-appreciation of entire evidence once again, but certainly, if the appreciation of evidence is tainted with perversity, that can be interfered with. In the case on hand, on perusing the entire records, the trial Court as well as the Appellate Court have not appreciated the evidence adduced in its proper legal perspective and misread the evidence. Both the Courts have only adopted erroneous approach, misconception of law and mis appreciation of evidence and that therefore they have been become vitiated. Hence, this Court concludes that the prosecution has miserably failed to establish the guilt of the second accused beyond reasonable doubt and consequently, the Judgments of the Court below are liable to be set aside.

16. In the result, the revision succeeds and stands allowed and the concurrent Judgments rendered by the learned Judicial Magistrate No.III, Nagercoil in C.C.No.118 of 2004, 14.09.2005 and the learned Sessions Judge, Mahila Fast Track Court, Nagercoil, Kanyakumari District dated 20.01.2017 in C.A.No. 232 of 2005 are hereby set aside. The revision petitioner / second accused is hereby acquitted of the charges and the fine amount paid, if any is ordered to be returned to him. Bail bond if any, shall stand cancelled.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

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To

1. The learned Sessions Judge, Mahila Fast Track Court,  
Nagercoil, Kanyakumari District.
2. The Judicial Magistrate No.III,  
Nagercoil, Kanyakumari District.
3. Do-Through the Chief Judicial Magistrate,  
Kanniyakumari @ Nagercoil.
4. The Inspector of Police,  
Anjugrammam, Kanyakumari District.
5. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

order made in  
**CRL.RC (MD) .No. 155 of 2017**

**17.04.2021**

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