



Bail Slip

The Petitioner P.Kasikumar S/o. Paramasivam was released on bail vide order of this Court dated 21.03.2017 made in Crl.MP.2121 of 2017 in Crl.R.C. (MD)No.238 of 2017.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.07.2021

Pronounced on : 08.10.2021

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

Crl.R.C. (MD)No.238 of 2017

P.Kasikumar

S/o. Paramasivam

... Petitioner/ Appellant / Sole Accused

Vs.

State Represented by
The Inspector of Police,
Oomachikulam Police Station,
Madurai.

Crime No.645 of 2014

... Respondent/ Respondent/ Complainant

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records and set aside the order passed in S.C.No.153 of 2016 dated 03.10.2016 on the file of the learned Chief Judicial Magistrate, Madurai as confirmed in Crl.A.No.94 of 2016 dated 23.02.2017 on the file of the First Additional District and Sessions Judge, Madurai.

For Petitioner : Mr.V.Thirumal
Legal Aid Counsel

For Respondents : Mr.K.Sanjay Gandhi
Government Advocate (Crl. Side)

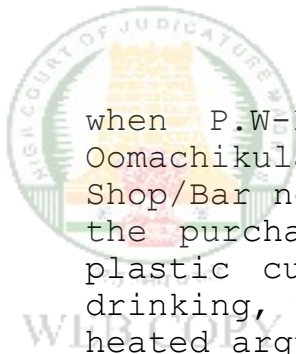
O R D E R

This Criminal Revision has been filed to set aside the order passed in S.C.No.153 of 2016 dated 03.10.2016 on the file of the learned Chief Judicial Magistrate, Madurai as confirmed in Crl.A.No.94 of 2016 dated 23.02.2017 on the file of the I Additional District and Sessions Judge, Madurai.

2. The brief facts which are necessary for consideration of this revision case are as follows:-

2.1.The Accused/Kasikumar in S.C.No.153 of 2016 is the Revision Petitioner. The Accused and P.W-1-Pandi, who were residing in Oomachikulam in Madurai, are friends and acquaintances doing the same job (i.e.,) Masonry work. On 22.05.2014 at around 3.00 p.m.,

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



when P.W-1 was walking from his home towards Aavin Dairy at Oomachikulam, the Accused invited him for drink (Alcohol) at TASMACH Shop/Bar near the Aavin Dairy. Therefore, P.W-1 went with him. After the purchase of brandy by the Accused, he had poured into two plastic cups and they started to drink. In the course of the drinking, they were in conversation and the conversation turned into heated arguments. Therefore, the Accused poured raw-brandy from his glass on the head of P.W-1 and set fire by uttering the words "You bastard, I will kill you". As the brandy poured on the head flowed down the head, all over his face and the back side of the head, the fire started to spread. On seeing this, P.W-1 cried and people around that place came to rescue him. P.W-2-Muniasamy is a carpenter and P.W-3-Arumugam is an Auto Driver. P.W-2 and P.W-3, who were present near the place of occurrence, informed P.W-5-Pandi Selvi wife of P.W-1. She came rushing after hearing the news of her husband suffering burns due to the conduct of Accused. P.W-5 with the help of P.W-2 and P.W-3 took P.W-1 to the Rajaji Government Hospital, Madurai. In the Government Hospital, P.W-8-Dr.Raja Ravi Varman, who was on duty in casualty ward, had examined P.W-1 and issued Ex.P-5-wound certificate. He had admitted P.W-1 in Plastic Surgery Ward. On examination of P.W-1 by the Plastic Surgeon attached to the Rajaji Government Hospital, the injury caused on the head of P.W-1 with fire was considered as grievous in nature and accordingly, the same was recorded in Ex.P-5-wound certificate. On examination of the injury caused due to the fire on the head of P.W-1, P.W-8-Doctor had assessed the damage caused on the head due to the fire as 30%. Intimation was given by the Hospital Authorities to the Oomachikulam Police Station. On receipt of intimation from the Hospital, P.W-9-Baskaran, Sub Inspector of Police from Oomachikulam Police Station, Madurai District had proceeded to the Rajaji Government Hospital by 5.00 p.m., and examined P.W-1 who was admitted in Ward No.301 and P.W-5-his wife who was also available in the Ward. She had also given statement regarding the cause of injury on the head of P.W-1 by the Accused. The oral complaint given by P.W-1 from the Hospital Bed, was reduced into writing by P.W-9-Baskaran-Sub Inspector of Police. P.W-2 had affixed her signature as a witness to the complaint received from P.W-1. P.W-1 also affixed his signature on the complaint. He returned to Police Station by 22 hours and registered a case in Cr.No.645 of 2014 of Oomachikulam Police Station under Sections 294(b) and 307 IPC. The FIR registered by him is Ex.P-6. The said oral complaint and the original FIR under Ex.P-6 was sent to the Court of the learned Judicial Magistrate - II, Madurai and the copy of the same was forwarded to the higher officials including the Inspector of Police, Oomachikulam Police Station. On receipt of a copy of the FIR under Ex.P-6 and the copy of the complaint under Ex.P-1, P.W-10-Muthukumar-Inspector of Police, Oomachikulam Police Station had proceeded with the investigation and he proceeded to the TASMACH Shop near Aavin Dairy near Oomachikulam and prepared Observation Mahazar under Ex.P-7 and Rough Sketch under Ex.P-8 in the presence of



witnesses P.W-6-Syed Ibrahim and P.W-7-Paulraj. He had visited Government Rajaji Hospital at Madurai and recorded the statements of P.W-1 who was undertaking treatment in Ward No.301 in the Rajaji Government Hospital. He had also recorded the statement of P.W-5-wife of P.W-1 and other witnesses also. He came to understand that the Accused in this case had obtained Anticipatory Bail. Therefore, he was not arrested. He completed investigation and laid final report under Section 173 of Cr.P.C., before the Court of the learned Chief Judicial Magistrate - II, Madurai.

2.2. Taking on file the final report by the Inspector of Police, Oomatchikulam Police station, the learned Judicial Magistrate - II had taken cognizance of offence under Sections 294 (b) and 307 of IPC and numbered the final report of Inspector of Police as P.R.C.No.72 of 2015 and he had sent summon to the Accused.

2.3. On appearance of the Accused, copies were furnished to him under Section 207 of Cr.P.C., and he was enquired regarding his resources to engage a Counsel to defend him. He had answered that he had resources to engage a Counsel to defend him. Therefore, the case was committed to the Sessions Court since the offences were triable by Sessions Court and the case records were sent to the Principal District and Sessions Judge, Madurai. The Accused was bound over to the Court of the Principal Sessions Judge, Madurai.

2.4. Taking cognizance by the learned Sessions Judge on receipt of the records in P.R.C.No. 72 of 2015 from the learned Judicial Magistrate - II, Madurai, the learned Sessions Judge had numbered the case as Sessions Case in S.C.No.153 of 2016. Since the offence under Section 307 of IPC is triable by the learned Sessions Judge, the case was made over to the file of the learned Chief Judicial Magistrate cum Assistant Sessions Judge, Madurai and the Accused was bound over to the Court of the learned Chief Judicial Magistrate cum Assistant Sessions Judge, Madurai.

2.5. On appearance of the Accused before the learned Chief Judicial Magistrate, Madurai, the learned Chief Judicial Magistrate, Madurai had heard the prosecution and the defence and framed charges under Sections 294 (b) and 307 of IPC. The Accused denied the charges and claimed to be tried. Therefore, the trial was ordered.

2.6. During the trial, the prosecution had examined witnesses P.W-1 to P.W-11 and documents Ex.P-1 to Ex.P-8 and no Material Objects were marked.

2.7. On closing of the prosecution evidence, the Accused was examined under Section 313 of Cr.P.C., regarding the incriminating evidence available against him from the evidence of P.W-1 to P.W-11. The Accused denied the incriminating evidence against him and he did not offer any explanation or examined any witnesses as defence



witness.

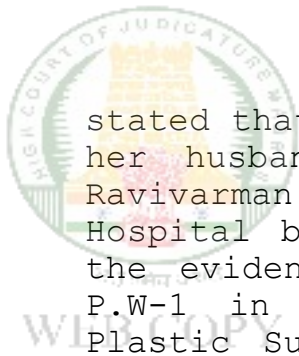
2.8. After hearing the arguments of the prosecution and defence and on assessment of evidence, the learned Chief Judicial Magistrate had by his Judgment dated 03.10.2016 convicted the Accused for the offences under Sections 294 (b) and 326 of IPC. On conviction of the Accused, the Accused was sentenced to undergo imprisonment for 4 years and to pay a fine of Rs.1,000/-, in default, to undergo two months Simple Imprisonment for the offences under Section 326 and to pay a fine of Rs.500/- for the offence under Section 294(b) of IPC.

2.9. Aggrieved by the judgment of conviction and sentence of imprisonment, the Accused filed appeal before the learned Principal District and Sessions Judge, Madurai. The appeal preferred by the Accused was numbered as C.A.No.94 of 2016 and the case was made over to the file of the learned First Additional District and Sessions Judge, Madurai. The learned First Additional District and Sessions Judge, Madurai on hearing the arguments of the appellant, on hearing the reply of the prosecution and on reappraisal of entire materials available before the learned Chief Judicial Magistrate had dismissed the C.A.No.94 of 2016 and confirmed the conviction and sentence of imprisonment imposed against the Accused.

3. Aggrieved by the dismissal of the appeal and confirmation of judgment of conviction and sentence of imprisonment awarded by the learned Chief Judicial Magistrate cum Assistant Sessions Judge, the Accused had preferred this Criminal Revision before this Court.

4. The grounds of Revision and the main contention of the Accused/Revision Petitioner is that the learned trial Judge had failed to appreciate the evidence as per the Indian Evidence Act. Though the prosecution is unable to prove the charge beyond reasonable doubt as the witnesses had turned hostile, the learned Chief Judicial Magistrate had convicted the Accused. The appellate Court while hearing the appeal, rejected the contention of the Appellant/Accused and dismissed the appeal. The finding of guilt recorded by the learned Chief Judicial Magistrate cum Assistant Sessions Judge, Madurai and confirmed by the learned First Additional District and Sessions Judge, Madurai is perverse. Both the Courts failed to appreciate the evidence available in the cross examination of P.W-1 to P.W-11.

5. Mr.V.Thirumal, learned Counsel nominated by the Legal Service Committee attached to the Madurai Bench of this Court, appearing for the Revision Petitioner, submitted that the Revision Petitioner sought to set aside the finding of guilt recorded by the learned Chief Judicial Magistrate, Madurai in S.C.No.153 of 2016 as confirmed by the learned First Additional District and Sessions Judge, Madurai in C.A.No.94 of 2016. During trial, P.W-1 had stated that he was taken to Hospital by P.W-5-Wife of P.W-1, whereas P.W-5



stated that she had gone to the Hospital to know about the fact that her husband had been admitted in the Hospital. P.W-8-Dr.Raja Ravivarman had in his evidence stated that P.W-1 was admitted in Hospital by his wife. Therefore, there are contradictions between the evidence of prosecution witnesses regarding the admission of P.W-1 in Hospital. P.W-8-Doctor had stated that Dr.Jayakodi, Plastic Surgery Department had examined P.W-1 and issued Ex.P-5-Accident Register mentioning that it is a grievous injury. The said Plastic Surgeon was not examined as a witness by the prosecution and X-ray is to be marked regarding the grievous injury and no X-ray was marked in this case. Material Objects were not seized viz., match box, liquor bottle and glasses containing liquor. Therefore, prosecution had not established the case against the Accused beyond reasonable doubt.

6. In support of his contention that the Revision Court has to set aside the conviction imposed by the learned Judicial Magistrate, Madurai and confirmed in C.A.No.94 of 2016 by the learned First Additional District and Sessions Judge, Madurai, the learned counsel for the Revision Petitioner relied on the following Rulings:

1. **Sakthivel -Vs- State Rep. by the Inspector of Police, V-3, Perunkudi Police Station, Madurai District in Crl.R.C.No.410 of 2008 dated 11.12.2014.**
2. **Gopal @ Gopalakrishnan -Vs- State Rep. by the Inspector of Police, Lalgudi Police Station in Crl.A.(MD).No.512 of 2008 dated 03.11.2017 reported in (2017) 4 MLJ Cr1. 746.**
3. **P.Senthil and another -Vs- State rep. by the Inspector of Police, Lalgudi Police Station in Crl.A.(MD)No.428 of 2006 reported in (2018) 2 MLJ Cr1 582.**
4. **G.Shopana -Vs- State Rep. by the Inspector of Police, Tallakulam Police Station, Madurai in Crl.R.C(MD).No.59 of 2017 dated 15.04.2021.**

7. The decision relied on by the learned Counsel for the Revision Petitioner/Accused in the case of **Sakthivel -Vs- State Rep. by the Inspector of Police, V-3, Perunkudi Police Station, Madurai District in Crl.R.C.No.410 of 2008 dated 11.12.2014** is not applicable to the facts and law involved in this case. Here, all the witnesses had supported the prosecution case and the learned Counsel for the Revision Petitioner had not cross-examined the witnesses when they were available in the Court. When they were cross-examined after a gap of 45 days, the individual witnesses had turned hostile. Therefore, the learned Counsel for the Revision Petitioner's argument that the conviction of the accused by the trial Court as well as the Appellate Court is against the principles of law, cannot be accepted and so rejected. The conviction by the



learned trial Judge and learned Appellate Judge is found as per the rulings laid down by the Hon'ble Supreme Court in **Vinod Kumar v. State of Punjab** reported in **(2015) 1 MLJ (Crl) 288 (SC)**.

8.The decision relied on by the learned Counsel for the Revision Petitioner/Accused in the case of **Gopal @ Gopalakrishnan -Vs- State Rep. by the Inspector of Police, Lalgudi Police Station** reported in **(2017) 4 MLJ Cr1. 746** will not be applicable to the facts in this case. Here, there is no necessity to mark x-ray as the Accused had poured raw brandy on the head of P.W-1 and set fire to his head. Therefore, the skin was burnt by the conduct of accused which gives rise to disfiguration of the head and face of P.W-1 that attracts the ingredients of Section 326 of IPC. Only in cases where fracture of bone involved, x-ray is to be marked. Failure to mark x-ray will not be fatal to the prosecution case. Even otherwise, the evidence of the injured victim has more weightage. The evidence of P.W-1 is supported by P.W-8-Doctor. As per the rulings of the Hon'ble Supreme Court in the case of **Anirudh -vs- Sate of Gujarat** reported in **(1995) 5 SCC 302** and in the case of **Vadivelu Thevar -vs- State of Madras** reported in **AIR 1957 SC 614**, if the evidence of the witness inspires confidence, the Trial Judge can convict the accused. The benefit of shoddy investigation cannot be extended to the accused. Therefore, the above said ruling will not help the case of the Accused/Revision Petitioner.

9.The reliance placed on by the learned Counsel for the Revision Petitioner/Accused in the case of **P.Senthil and another -Vs- State rep. by the Inspector of Police, Lalgudi Police Station** reported in **(2018) 2 MLJ Cr1 582** will not help the case of the Revision Petitioner/Accused. In the reported decision, it was a case of injury. The weapon of offence was not recovered. The recovery of weapon was doubtful. In the case before this Court, the accused had poured raw brandy on the head of P.W-1 and set him on fire. The injury suffered by P.W-1 was on his head and face. There was no involvement of knife injuries. The evidence of P.W-1 was supported by P.W-8-Doctor. Under those circumstances, the reliance placed on by the learned Counsel for the Revision Petitioner/Accused in the above case will not help the Revision Petitioner/Accused. Hence, the arguments of the learned Counsel for the Revision Petitioner is rejected.

10.The learned Counsel for the Revision Petitioner/Accused relied on the decision of this Court in the case of **G.Shopana -Vs- State Rep. by the Inspector of Police, Tallakulam Police Station, Madurai in Crl.R.C(MD).No.59 of 2017 dated 15.04.2021**. The facts in the above case is different from the facts in this case. As pointed out in the above paragraphs No.7, 8 and 9, to avoid repetition, the same reasoning applies to this case. P.W-1 is the victim who had suffered pain and disfiguration due to the conduct of the accused.



The pain and suffering of P.W-1 is corroborated by P.W-8-Doctor. Therefore, the shoddy investigation will not help the accused to wriggle out of the legal issue. Therefore, the same is rejected.

11. Mr.K.Sanjay Gandhi, learned Government Advocate (Crl. Side) by way of reply to the arguments of the learned counsel for the Revision Petitioner, had invited the attention of this Court to the evidence recorded in the Court of the learned Chief Judicial Magistrate, Madurai, when P.W-1 to P.W-8 were available in the Court on the date of deposing evidence in examination-in-chief, even though the Accused and his Counsel were present, the Counsel for the Accused did not cross-examine them. He had filed a petition under Section 311 of Cr.P.C., to recall the witnesses after 45 days had lapsed. The witnesses including P.W-1 and his wife/P.W-5 turned hostile during cross examination which is against the Ruling of the Hon'ble Supreme Court in the case of **Vinod Kumar v. State of Punjab** reported in **(2015) 1 MLJ (Crl) 288 (SC)**. Therefore, reliance placed by the learned counsel for the Revision Petitioner will not hold good. On perusal of the deposition of witnesses, all the witnesses had cogently supported the prosecution case in their examination-in-chief. After a lapse of 45 days all the witnesses, except the Investigation Officer, Doctor, Sub Inspector of Police, other witnesses turned hostile. The Court can draw adverse inference under Section 114 of the Indian Evidence Act regarding the duration of 45 days exploited by the Accused, either to coerce or threaten the witnesses, including the person who suffered burn injuries on his head in the vital part of the body. Eventually, P.W-1 was alive on reaching the hospital, he had clearly stated that fact to P.W-8-Casualty Ward Medical Officer and P.W-9 who recorded the oral statement of P.W-1 in the Hospital. P.W-8-Doctor had recorded the occurrence as stated by P.W-1 that the Accused had poured Alcohol and set fire and also the Doctor had noted that P.W-1 was under the influence of alcohol. As he mentioned, he was during the course of consuming alcohol, his friend poured alcohol on his head and set fire. Therefore, it clearly attracts the ingredients of offence under Section 307 of IPC for which stronger punishment and sentence ought to have been awarded to the Accused. Instead, the learned Chief Judicial Magistrate had only convicted the Accused with a lesser punishment for the offence under Section 326 of IPC and rigorous imprisonment of four years alone was awarded. Also, the learned Government Advocate (Crl. Side) relied on the ruling of the Hon'ble Supreme Court in the case of **State represented by the Drugs Inspector -vs- Manimaran**, in **(2019) 13 SCC 670**, for the proposition that the powers of Revision and when the trial Court and Appellate Court assessed the evidence, Revision Court does not have the discretion to re-assess the entire materials available before the learned trial Judge. Only if there is miscarriage of justice or perverse finding, the Revision Court can exercise its discretion based on facts and law and not to re-hear or re-assess the entire materials available before the learned trial Judge.

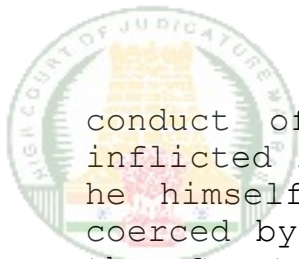


12.The conduct of the Accused in seeking time before the learned trial Court, for threatening the injured with dire consequences and hence the injured turned hostile, is to be considered by this Court, as per the guidelines laid down in the reported ruling of the Hon'ble Supreme Court in the case of **Vinod Kumar v. State of Punjab** reported in **(2015) 1 MLJ (Crl) 288 (SC)**. The learned Sessions Judge had relied on the rulings of the Hon'ble Supreme Court. **Selvaraj @ Chinnapaiyan v. State** reported in **2015-2-L.W (Crl.) 500** and **Himanshu Alias Chintu v State (NCT of Delhi)** reported in **(2011) 2 SCC 36** for the proposition that if the counsel for the Accused does not cross examine the witnesses on the day, they had deposed the evidence in examination-in-chief and cross-examine after long duration according to the convenience of the Accused and at that stage, if the witnesses turned hostile, the Court is within its discretion to arrive at a conclusion to accept the evidence, that was let in by the same witnesses at the earliest point of time supporting the prosecution case and can reject the evidence of the same witnesses in the cross-examination, that is, hostile to the prosecution case and the learned Chief Judicial Magistrate has rejected "so called" hostile evidence of the witnesses. On consideration of the evidence in examination-in-chief that all the witnesses P.W-1 to P.W-7 had been cogent and supporting the prosecution case, the learned Chief Judicial Magistrate had accepted that there had been minor contradictions. At the same time, the evidence of the injured witness has more weightage and therefore based on the veracity of the evidence in examination-in-chief of P.W-1 supported by the other witnesses viz., P.W-2 to P.W-5, the learned Chief Judicial Magistrate had accepted the prosecution case and convicted the Accused by placing reliance on the ruling of the Hon'ble Supreme Court regarding dilatory tactics indulged by the Accused against the principles of fair trial guaranteed to the citizens by the Constitution of India under Article 21 of the Constitution of India.

13.Point for Consideration:

Whether the judgment of conviction recorded by the learned Chief Judicial Magistrate in S.C.No.153 of 2016 and confirmed by the learned First Additional Sessions Judge, Madurai, in Crl.A.No.94 of 2016 is perverse warranting interference by this Court as Revisional Court?

14.Perused the Judgment of the learned trial Judge in S.C.No.153 of 2016 and the learned First Appellate Judge in Crl.A.No.94 of 2016 and on consideration of the same, as rightly pointed out by the learned Government Advocate (Crl. Side), the learned Chief Judicial Magistrate had properly assessed the evidence and had rejected the "so-called hostile evidence" including the injured witnesses P.W-1 to P.W-5 in the cross-examination. The Court is within its power to draw adverse inference from the



conduct of the witnesses. The injured witness P.W-1 who was inflicted injury by setting fire on his head by the Accused whereas he himself turning hostile being influenced either by threat or coerced by the Accused. That is the only presumption available to the Court. When some witnesses turned hostile in the cross examination after duration of roughly 45 days from the date of examination-in-chief, recall of witnesses by the Accused under Section 311 of Cr.P.C., according to the convenience of the Accused is found against the principles laid down by the Hon'ble Supreme Court in the case of **Vinod Kumar v. State of Punjab** reported in **(2015) 1 MLJ (Crl) 288 (SC)**; **Selvaraj @ Chinnapaiyan v. State** reported in **2015-2-L.W (Crl.) 500** and **Himanshu Alias Chintu v State (NCT of Delhi)** reported in **(2011) 2 SCC 36** and had rejected the evidence of cross-examination of all the witnesses P.W-1 to P.W-7 and arrived at a conclusion that the Accused had inflicted injury by setting fire on P.W-1, after pouring raw-brandy, which is alcoholic and inflammable, and setting fire with match stick and uttering the words "you bastard, should be killed", "செத்து தொலைடா தேவடியா மகனே" and the intention of setting fire that strictly attracts under Section 307 of IPC. The P.W-1-injured due to timely medical help was saved. The learned Chief Judicial Magistrate considering the fact that dis-figuration or loss of hair on the head and skin on the face had altered the charge for a lesser offence under Section 326 of IPC and the Accused had been convicted. This is a strict case warranting conviction under Section 307 of IPC to the maximum punishment of 10 years. Instead, the learned Chief Judicial Magistrate had convicted the Accused only for the offence under Section 326 of IPC even though there were no charges framed under Section 326 of IPC. The learned Chief Judicial Magistrate had convicted the Accused for lesser offence under Section 326 of IPC which is permissible as per the ruling of the Hon'ble Supreme Court without framing charges, if the ingredients of offence is made out from the materials available before the Court. Even though the charge had been framed for a greater offence warranting greater punishment, the Court can alter it to a lesser offence without framing charges. The trial Court had convicted the Accused by the said principle and the Accused had been convicted and sentenced to undergo 4 years of Imprisonment and fine of Rs.1,000/- for the offence under Section 326 of IPC. The revision does not warrant any merit as the learned First Additional Sessions Judge had re-assessed the entire material available before the learned Chief Judicial Magistrate, Madurai and arrived at a safe conclusion that the appeal lacks merits and was dismissed and confirmed the finding of guilt recorded by the learned Chief Judicial Magistrate, Madurai.

15.As per the reported ruling of the Hon'ble Supreme Court in the case of **State represented by the Drugs Inspector -vs- Manimaran**, in **(2019) 13 SCC 670**, held that the Revision Court cannot go into the concurrent findings. The relevant portion of the said decision

is extracted as under:

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



"D.Criminal Procedure Code, 1973 - S.401 - Revisional jurisdiction - Scope - Revisional Jurisdiction of High Court different from appellate jurisdiction - High Court, in revisional jurisdiction cannot interfere with concurrent findings of facts unless perverse or arrived at ignoring material evidence."

WEB COPY

This Court even though High Court exercising its discretion as revision Court do not have the power to re-assess the entire evidence. Only if the finding arrived at either by the learned trial Judge or the learned Appellate Judge is perverse, revision Court can exercise its discretion. The power of revision is on a narrow compass. Accepting the submission of the learned Government Advocate (Crl. Side) that this Court cannot re-assess the entire materials available before the learned trial Judge, this Court rejects the contention of the learned counsel for the Revision Petitioner. Also, as rightly pointed out by the learned Government Advocate (Crl. Side) the witnesses had been recalled after a gap of 45 days, thereby, they had been forced to resile from their earlier deposition resulting in witnesses turning hostile. Such conduct of the Accused threatening the witnesses to escape from criminal liability and getting punished by the Court of law is found condemnable which is against the principle laid down by the Hon'ble Supreme Court in the reported ruling in the case of **Vinod Kumar v. State of Punjab [(2015) 1 MLJ (Crl) 288 (SC)]**. Therefore, the revision petition is to be dismissed as having no merit.

16.The point for consideration is answered in favour of the prosecution and against the Accused/Revision Petitioner. The judgment of conviction recorded by the learned Chief Judicial Magistrate and confirmed by the learned First Additional District and Sessions Judge, Madurai are not perverse warranting interference by this Court as Revisional Court.

In the result, the Civil Revision Petition is dismissed.

The judgment of conviction recorded by the learned Chief Judicial Magistrate in S.C.No.153 of 2016 and confirmed by the learned First Additional District and Sessions Judge, Madurai, in C.A.No.94 of 2016 are confirmed. The learned Chief Judicial Magistrate is directed to issue warrant to secure the Accused to undergo the period of imprisonment. The Accused was not at all arrested immediately after the occurrence till the charge sheet was laid before the learned Chief Judicial Magistrate. Therefore, there is no period to be set off under Section 428 Cr.P.C. However, after sentencing the Accused to undergo 4 years of Rigorous Imprisonment and to pay a fine of Rs.1000/-, the Accused had been arrested and sentenced to undergo imprisonment. The Revision Petitioner/Accused was granted bail in Crl.M.P.(MD)No.2121 of 2017. Therefore the



period of detention already undergone by the Revision
Petitioner/Accused is set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar (CS-III)

WEB COPY

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dh

To:

- 1.The Chief Judicial Magistrate,
Madurai.
- 2.The First Additional District and Sessions Judge,
Madurai.
- 3.The Inspector of Police,
Oomachikulam Police Station,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.THIRUMAL, Advocate (SR-31896[F] dated 11/10/2021)

Crl.R.C. (MD) No.238 of 2017

08.10.2021

_RD/NS (24.11.2021) 11P 6C