



BAIL SLIP

The Petitioner/Petitioner, Raja S/o., Rasu was released on bail order of this court dated 16.03.2017 made in CRL.MP(MD).No. 2293/2017 in CRL.RC(MD).No. 256/2017.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.07.2021

DELIVERED ON : 01.10.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.R.C.(MD)No.256 of 2017

Mr.Raja

S/o. Rasu

: Petitioner/Appellant/Accused

Vs.

State Rep. By

Inspector of Police,

Kadupatti Police Station,

Madurai District.

(Cr.No.40 of 2011)

: Respondent/Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code, to call for the records relating to Judgment passed by the learned I Additional District and Sessions Judge, Madurai dated 20.02.2017 in C.A.No.90 of 2016 modifying the Judgment passed by the learned Chief Judicial Magistrate, Madurai in S.C.No.145 of 2013 dated 06.10.2016 and set aside the same.

For Petitioner

: Mr.N.Dilip Kumar

For Respondent

: Mr.T.Senthil Kumar

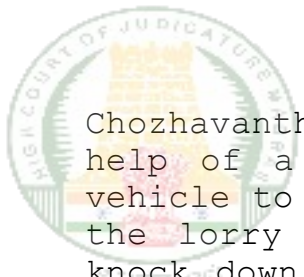
Government Advocate (Crl.side)

ORDER

This petition is filed as against the judgment of conviction by the learned I Additional District and Sessions Judge, Madurai dated 20.02.2017 in C.A.No.90 of 2016 modifying the judgment passed by the learned Chief Judicial Magistrate, Madurai in S.C.No.145 of 2013, dated 06.10.2016.

2.The brief facts, which are relevant for consideration of the revision, are as follows:-

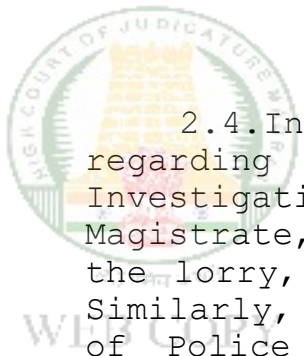
2.1.P.W-1-Sub Inspector of Police, accompanied by P.W.2-Karuppasamy, Constable, was on the night rounds at Chozhavanthan within the limits of two Police Stations at Chozhavanthan and Kadupatti. As per the instructions of his superiors, he had involved in vehicle check to prevent theft of river sand on the intervening night. While so a lorry bearing Registration No.TN-45-D-0096 was moving in a high speed on the Highway adjoining



Chozhavanthan and Kadupatti Police Station limits. P.W-1 with the help of a torch, signalled the driver of the lorry to stop the vehicle to enable him to check the vehicle. Knowing fully well that the lorry is filled with the river sand, the driver in order to knock down the Sub Inspector of Police, drove the lorry in such a manner, threatening P.W-1-Sub Inspector of Police and P.W-2-Constable who had accompanied him, attempting to knock them down with the lorry. Therefore, it attracts the Provision of attempt to murder. By timely action, they moved away in a spur of the moment, otherwise they would have been killed. It amounts to threatening the police officials who were involved in vehicle check. Therefore, the Sub Inspector of Police had preferred a complaint to the Inspector of Police, Kadupatti Police station. Raja-Special Sub Inspector of Police, on receipt of the complaint from P.W-1 under Ex.P-1, had registered the FIR under Ex.P-5 in Crime No.40 of 2011 under Sections 379, 353 and 307 (2 counts) of IPC. The Investigation Officer had conducted the investigation and laid the final report in the Court of the learned Judicial Magistrate, Madurai. Since the offence alleged are triable by the Sessions Judge, the learned Judicial Magistrate had sent the Court records to learned Principal Sessions Judge, Madurai. On receipt of the same, the learned Principal Sessions Judge had numbered the case as S.C.No.145 of 2013 and as the case being triable by Assistant Sessions Judge, it was made over to the Court of the learned Chief Judicial Magistrate cum Assistant Sessions Judge, Madurai. On appearance of the accused, the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Madurai had framed the charges under Sections 379, 353 and 307 (2 counts) of IPC and under Section 21(1) of Tamil Nadu Mines and Minerals Act. The accused pleaded not guilty. Therefore, the trial was ordered.

2.2.During the trial, the prosecution had examined witnesses as P.W-1 to P.W-12 and marked documents as Ex.P-1 to Ex.P-10 and M.O-1. On assessment of evidence, the learned Chief Judicial Magistrate had convicted the accused for the offence under Section 379, 353 and 307 (2 counts) of IPC. The accused was convicted for the offence under Section 379 of IPC and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.500/-, in default, to undergo 2 months of Simple Imprisonment; for the offence under Section 353 IPC, the accused was sentenced to pay a fine of Rs.500/-, in default, to undergo Simple Imprisonment for one week and for the offence under Section 307 (2 counts) of IPC convicted the accused and sentenced him to undergo 4 years of Rigorous Imprisonment for each count and to pay a fine of Rs.1,000/- each, in default, to undergo two months of Simple Imprisonment.

2.3.Aggrieved by the judgment of conviction and sentence of imprisonment imposed under Sections 379, 353, 307 (2 counts) of IPC, the accused in S.C.No.145 of 2013 had filed C.A.No.90 of 2016.



2.4. In the grounds of appeal, it is stated that Form-95 regarding theft of river sand had not been furnished by the Investigation Officer before the Court of the learned Judicial Magistrate, Madurai. In the absence of sand and in the absence of the lorry, the offence under Section 379 of IPC are not made out. Similarly, the weapon which was used to attack P.W-1-Sub Inspector of Police and P.W-2-Constable attached to Chozhavanthan Police Station had not been recovered. Except P.W-1 and P.W-2, no other witnesses had supported the case of the prosecution. Therefore, the conviction under Section 307 of IPC is perverse and is to be set aside.

2.5. Similarly, for the charge under Section 353 of IPC also, there is no evidence, except evidence of P.W-1 and P.W-2. Therefore, the conviction of the accused by the learned Chief Judicial Magistrate, Madurai in S.C.No.145 of 2013 and awarding sentence of imprisonment are to be set aside as perverse.

2.6. After hearing arguments of the learned counsel for the appellant/accused and the learned Public Prosecutor, the learned First Additional District and Sessions Judge had acquitted the accused from the charge under Section 307 (2 Counts) IPC in S.C.No.145 of 2013 of the learned Chief Judicial Magistrate, Madurai and the conviction for the offences under Sections 379 of IPC and 353 of IPC were confirmed. The State had not preferred revision against the said judgment.

3. Therefore, the appellant/accused before the learned First Additional District and Sessions Judge had preferred this criminal revision.

4. The learned counsel for the revision petitioner/accused had submitted his arguments orally.

5. The learned Government Advocate (Crl. Side), by way of reply, had submitted that the learned Chief Judicial Magistrate on proper appreciation of evidence, had convicted the accused for the offence under Sections 379, 353 and 307 (2 counts) of IPC. Further, by relying on the rulings of the Hon'ble Supreme Court in the case of **State represented by the Drugs Inspector -vs- Manimaran, in (2019) 13 SCC 670** submitted that the High Court as Revision Court cannot assess the evidence as the focus of Revision Court is on a narrow compass. Therefore, it cannot exercise discretion as Appellate Court to re-assess the entire evidence available before the trial Court. It is useful to extract the relevant portion of the above decision which reads as under:

"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."

Therefore, the appeal lacks merits and it has to be dismissed.

6.Point for consideration:

Whether the judgment of conviction recorded by the First Additional District and Sessions Judge, Madurai, in C.A.No.90 of 2016, dated 20.02.2017 modifying the Judgment passed by the learned Chief Judicial Magistrate, Madurai in S.C.No.145 of 2013, dated 06.10.2016 is perverse warranting interference by this Court as Revisional Court?

7.The greedy sand contractors and civil contractors and the lorry owners engage lorry drivers to indulge in such activities which are against the environment and against the interest of the farmers. Therefore, the police officials are on duty. Here, in this case, P.W-1-Sub Inspector of Police and P.W-2-Karuppasamy, Police Constable, who accompanied him, were at night rounds in order to prevent theft of river sand without obtaining licence or permission from the Competent Authority of Government of Tamil Nadu. While P.W-1 and P.W-2 were engaged by their higher officials on night rounds to prevent ecological disaster to the rivers in Tamil Nadu to prevent water shortage and to protect the agriculture. While so, on the date of occurrence, the accused drove the vehicle in such a manner so as to dash against P.W-1 and P.W-2 with an attempt to knock them down. However, in a spur of the moment they moved away, otherwise they would have been killed. Therefore, the act of the accused transporting the river sand and threatening the Police Officials, who were involved in vehicle check, amounts to violation of mandatory rules. Therefore, the accused was convicted for the offences under Sections 379 and 353 of IPC.

8.On perusal of the materials available before the learned trial Judge, and the judgment of the learned Chief Judicial Magistrate and learned First Additional District and Sessions Judge, Madurai, it is found that the grounds raised in the revision lacks merits and hence, liable to be dismissed.

9.As per the rulings of the Hon'ble Supreme Court in **(2019) 13 SCC 670** in the case of **State represented by the Drugs Inspector -vs- Manimaran**, the Revisional Court, even though High Court cannot go into the assessment of evidence particularly, if two courts had given concurrent findings of fact. Only if it is perverse, the Revisional Court can exercise its discretion. Based on the above proposition of law, nothing is found perverse in the judgment of the learned Trial Judge and which was confirmed in Appeal by the learned



10.The point for consideration is answered in favour of the prosecution and against the petitioner/accused. The judgment of conviction recorded by the First Additional District and Sessions Judge, Madurai, in C.A.No.90 of 2016, dated 20.02.2017 is not perverse warranting interference by this Court.

In the result, this revision is dismissed.

The judgment of conviction and order of sentence imposed by the First Additional District and Sessions Judge, Madurai, in C.A.No.90 of 2016, dated 20.02.2017 is confirmed. The learned Chief Judicial Magistrate, Madurai, is directed to issue warrant to secure the revision petitioner and to forward him to prison to undergo the remaining period of sentence. The period of detention already undergone by the accused is set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

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

Copy to

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

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-31108[F] dated 04/10/2021)

Crl.R.C.(MD)No. 256 of 2017
01.10.2021

Ps (CO)

KB(18.11.2021) 5P 8C

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