



BAIL SLIP

The petitioner/1st Revision petitioner, Thangapandi, S/o. Sadayan was released on bail as per order of this Court dated 19.06.2017 made in CRL.MP(MD).No. 5169 of 2017 in CRL.RC.(MD).No. 478 of 2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.R.C. (MD)No.478 of 2017

1.Thangapandi, S/o.Sadayan
2.Pandikumar, S/o.Sadayan

.. Revision Petitioners/
Appellants/Accused 1 and 2

Vs.

The State,
Rep. by Sub-Inspector of Police,
Allinagaram Police Station,
Theni District.
(Crime No.34 of 2011)

..Respondent/Respondent
/Complainant

PRAYER: This Criminal Revision Petition is filed under Section 397 r/w. 401 of the Code of Criminal Procedure, to set aside the conviction and sentence awarded by the learned Additional District and Sessions Judge, Theni at Periyakulam, in C.A.No.10 of 2015, dated 28.02.2017, modifying the conviction and sentence awarded upon the petitioners in S.C.No.84 of 2014, dated 30.03.2015, by the learned Assistant Sessions Judge-cum-Chief Judicial Magistrate, Theni.

For Petitioners	: Mr.Samichandrasekaran for Mr.D.Selvanayagam
For Respondent	: Mr.M.Muthumanikkam Government Advocate (Criminal side)

ORDER

The revision petitioners are arrayed as Accused Nos.1 and 2 in S.C.No.84 of 2014, on the file of the Assistant Sessions and Chief Judicial Magistrate Court, Theni. The first petitioner stood charged for the offences punishable under Sections 294(b) and 307 I.P.C. and the second petitioner stood charged for the offences under Sections 294(b), 342 and 307 read with Section 34 I.P.C. By judgment dated 30.03.2015, the learned Assistant Sessions Judge-cum-Chief Judicial Magistrate, Theni, came to the conclusion that the first petitioner is found guilty under Section 307 I.P.C. and



sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for three months. Further, it was contended that the second petitioner is found guilty under Section 342 I.P.C., and ordered to pay a fine of Rs.1,000/-, in default, to undergo two months rigorous imprisonment. In respect of the offence under Section 307 read with 34 I.P.C., the second petitioner was convicted and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for three years.

2. Aggrieved over the said conviction and sentence, the revision petitioners have preferred an appeal before the learned Additional District and Sessions Judge, Theni, in C.A.No.10 of 2015. By judgment dated 28.02.2017, the learned Additional District and Sessions Judge, Theni, had partly allowed the appeal, setting aside the conviction and sentence imposed on the second petitioner in respect of the offence under Section 307 read with 34 I.P.C. alone. With respect to the conviction awarded under the other offences, the learned Additional District and Sessions Judge had dismissed the appeal.

3. Challenging the said conviction and sentence, the petitioners have preferred this Criminal Revision before this Court.

4. Today, when this Criminal Revision is taken up for hearing, a Joint Memo of Compromise, signed by the petitioners, the de-facto complainant and the learned counsel for the revision petitioners, has been filed before this Court, for compounding the offence. The revision petitioners, i.e., Thangapandi and Pandikumar, Mr.S.Seenivasan, Special Sub-Inspector of Police, Allinagaram Police Station, Theni District and the de-facto complainant viz., P.Chinnasadayar were also present in person before this Court and they were identified by the said S.Seenivasan, Special Sub-Inspector of Police. The learned Government Advocate (Criminal side) appearing for the respondent Police has also conceded that the parties present before this Court are the accused and de-facto complainant. This Court also enquired both parties and was satisfied that the parties have come to an amicable settlement between themselves.

5. The learned counsel appearing for the petitioners submitted that due to the efforts made by the elders of their family, the revision petitioners and the de-facto complainant now settled the issue amicably between themselves and thereby, further proceedings are not necessary. In support of his submission, the learned counsel appearing for the revision petitioners relied on the judgment of the Hon'ble Apex Court in the case of **Murali Vs. State, Rep. by Inspector of Police** reported in **2021 (1) SCC 726**, wherein,

<https://hcdvicescourts.gov.in/hcdvices/> as follows:-



''8. There can be no doubt that Section 320 of the Criminal Procedure Code, 1973 ("CrPC") does not encapsulate Sections 324 and 307 IPC under its list of compoundable offences. Given the unequivocal language of Section 320(9) CrPC which explicitly prohibits any compounding except as permitted under the said provision, it would not be possible to compound the appellants' offences. Notwithstanding thereto, it appears to us that the fact of amicable settlement can be a relevant factor for the purpose of reduction in the quantum of sentence.

9. In somewhat similar circumstances where the parties decided to forget their past and live amicably, this Court in Ram Pujan v. State of U.P. [Ram Pujan v. State of U.P., (1973) 2 SCC 456 : 1973 SCC (Cri) 870] , held as follows: (SCC p. 458, paras 6-7)

''6. The only question with which we are concerned, as mentioned earlier, is about the sentence. In this respect we find that an application for compromise on behalf of the injured prosecution witnesses and the appellants was filed before the High Court. It was stated in the application that the appellants and the injured persons, who belong to one family, had amicably settled their dispute and wanted to live in peace. The High Court thereupon referred the matter to the trial court for verification of the compromise. After the compromise was got verified, the High Court passed an order stating that as the offence under Section 326 of the Penal Code, 1860 was non-compoundable, permission to compound the offence could not be granted. The High Court all the same reduced the sentence for the offence under Section 326 read with Section 34 of the Penal Code, 1860 from four years to two years.

7. The appellants during the pendency of the appeal were not released on bail and are stated to have already undergone a sentence of rigorous imprisonment for a period of more than four months. As the parties who belong to one family have settled their dispute, it is, in our opinion, not necessary to keep the appellants in jail for a longer period. The major offence for which the appellants have been convicted is no doubt non-compoundable,



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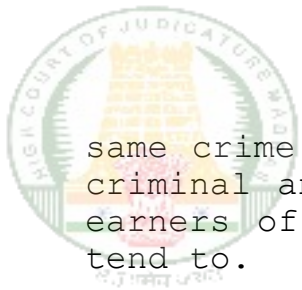
but the fact of compromise can be taken into account in determining the quantum of sentence. It would, in our opinion, meet the ends of justice if the sentence of imprisonment awarded to the appellants is reduced to the period already undergone provided each of the appellants pays a fine of Rs 1500 in addition to the period of imprisonment already undergone for the offence under Section 326 read with Section 34 of the Penal Code, 1860. In default of payment of fine, each of the appellants shall undergo rigorous imprisonment for a total period of one year for the offence under Section 326 read with Section 34 of the Penal Code, 1860. Out of the fine, if realised, Rs 2000 should be paid to Ram Sewak and Rs 2000 to Ram Samujh as compensation. We order accordingly.''

(emphasis supplied)

10. The aforecited view has been consistently followed by this Court including in *Ishwar Singh v. State of M.P.* [*Ishwar Singh v. State of M.P.*, (2008) 15 SCC 667 : (2009) 3 SCC (Cri) 1153] , laying down that: (SCC p. 670, paras 13-15)

'13. In *Jetha Ram v. State of Rajasthan* [*Jetha Ram v. State of Rajasthan*, (2006) 9 SCC 255 : (2006) 2 SCC (Cri) 561], *Murugesan v. Ganapathy Velar* [*Murugesan v. Ganapathy Velar*, (2001) 10 SCC 504 : 2003 SCC (Cri) 1032] and *Ishwarlal v. State of M.P.* [*Ishwarlal v. State of M.P.*, (2008) 15 SCC 671 : (2009) 3 SCC (Cri) 1156] this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in *Mahesh Chand v. State of Rajasthan* [*Mahesh Chand v. State of Rajasthan*, 1990 Supp SCC 681 : 1991 SCC (Cri) 159] such offence was ordered to be compounded.

14. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of



same crime. More than that, the revision petitioners have no other criminal antecedents, no previous enmity. They are the sole bread earners of their family and have significant social obligations to tend to.

7. Therefore, considering all these unique factors, including the compromise between the parties, I deem it appropriate to reduce the quantum of sentence imposed on the revision petitioners. The Criminal Revision is, therefore, partly allowed and sentence of both the revision petitioners is reduced to the period already undergone by them. Consequently, they are set free and their bail bonds, if any, are discharged.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

To

1. The Additional District and Sessions Judge,
Theni District at Periyakulam.

2. The Assistant Sessions Judge-cum-Chief Judicial Magistrate,
Theni.

3. The Sub-Inspector of Police,
Allinagaram Police Station,
Theni District.

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

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

+1 CC to M/s.D.SELVANAYAGAM, Advocate (SR-29537[F] dated 17/09/2021)

CrI.R.C. (MD) No.478 of 2017
17.09.2021

PS (CO)

KB (04.10.2021) 6P 8C