



BAIL SLIP

The Petitioner/Petitioner M.Arockiasamy, S/o.Madasamy was released on Bail order of this Court on 10/07/2017 made in Crl.Mp.5877 of 17 in Crl.R.C.523 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.07.2021

DELIVERED ON : 08.10.2021

CORAM

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

CRL.R.C. (MD)No.523 of 2017

M.Arockiasamy : Revision Petitioner / Appellant/ Accused
Vs.

The State,

Rep. by Sub Inspector of Police,
Palanichettipatty Police Station,
Theni District.

(Crime No.169 of 2011) : Respondent/ Respondent/ Complainant

PRAYER: Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code, to allow this Criminal Revision and set aside the Judgment and Sentence passed by the learned Additional District and Sessions Judge, Theni at Periyakulam in C.A.No.33 of 2014 dated 15.12.2016 confirming the Judgment and Sentence imposed upon the petitioner in C.C.No.39 of 2013, dated 03.07.2014 by the learned Chief Judicial Magistrate, Theni.

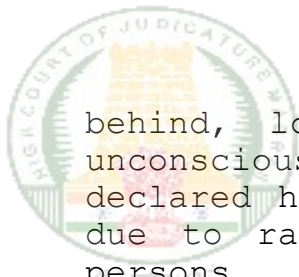
For Petitioner : Mr.D.Srinivasa Ragavan
For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.side)

O R D E R

This Criminal Revision Petition has been filed to set aside the judgment and sentence passed by the learned Additional District and Sessions Judge, Theni at Periyakulam in C.A.No.33 of 2014 dated 15.12.2016 confirming the judgment and sentence imposed upon the petitioner in C.C.No.39 of 2013 dated 03.07.2014 by the learned Chief Judicial Magistrate, Theni.

2. The brief facts which are relevant for consideration of the Revision Case are as follows:

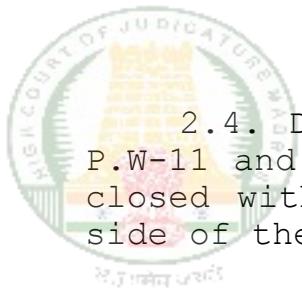
2.1.On 10.05.2011 at about 6.30 p.m., the Revision Petitioner who is the accused before the learned Chief Judicial Magistrate, Theni, after consuming Alcohol had driven an Auto Rickshaw bearing Registration No.TN-60-B-7724 from North to South and hit against the pilgrims who were observing fast and moving towards Veerapandi Temple. He had knocked down the pilgrims by name Madankumar, Saran Raj, Kalyani and Vignesh Kumar. Madan Kumar, who was hit from



behind, lost control and fell on the road and thereby became unconscious. He was taken to Government Hospital, where the Doctors declared him brought dead. Therefore, the accused had caused death due to rash and negligent driving and caused injuries to three persons. The passers-by on the road informed the Police at P.C.Patti regarding the accident.

2.2.P.W-10-Arunan-Special Sub Inspector of Police, P.C.Patti Police Station had registered the case in Cr.No.169 of 2011 under Section 279, 337 and 304(A) IPC r/w. 185 of Motor Vehicles Act. The Auto-rickshaw driver/accused was immediately caught by the passers-by and handed over to the Police, the Police arrested him and sent him to remand on the same day. Later, he was released on bail. P.W-10 had sent the copy of the FIR along with the remand request to the Court of the learned Judicial Magistrate, Theni and the copy of the same was sent P.W-11-Prem Anand-Inspector of Police and to the higher officials of Police Department. P.W-1-Vignesh Kumar-de-facto complainant, P.W-2-Sri Kalyani, P.W-3-Saran Raj, who were undergoing treatment in the Government Hospital were examined by P.W-11 and their statements were recorded. He had visited P.C.Patti Pazhaniyappa School (i.e.,) scene of occurrence and prepared Observation Mahazar under Ex.P-2 and Rough Sketch under Ex.P-8 in the presence of witnesses P.W-6-Sathyamoorthy. He had examined P.W-8-Dr.Guna, who treated P.W-1 to P.W-3 and had issued wound certificates under Ex.P-4 to Ex.P-6, and the witnesses P.W-4 to P.W-7. He had also stated that the Auto was sent to the Motor Vehicles Inspector to examine the condition of the Auto. On completion of the investigation, P.W-11 laid final report of the investigation under Section 173 of Cr.P.C., before the Court of the learned Judicial Magistrate, Theni. He had examined Dr.Arun Kumar, who conducted inquest on the body of the deceased in the Mortuary in the Government Hospital, Theni and issued Postmortem report under Ex.P-10. He prepared inquest report under Ex.P-9. He had subjected the body of the deceased to Postmortem examination with a letter of request to the learned Judicial Magistrate who in turn addressed the Forensic Expert regarding the same. Accordingly, Postmortem performed and report regarding the same was filed under Ex.P-10. Since the cases under Section 304 of IPC are conducted by the learned Chief Judicial Magistrate, the learned Judicial Magistrate forwarded the case to the Court of learned Chief Judicial Magistrate. The learned Chief Judicial Magistrate had taken cognizance of the offence under Section 304 of IPC and assigned the number in C.C.No.39 of 2013 and issued summons to the accused.

2.3. On appearance of the accused, copies were furnished under Section 207 of Cr.P.C., and charges were framed against the accused. Since the charges under Sections 304 and 337 (3 Counts) of IPC were denied by the accused and claimed to be tried, the learned Chief Judicial Magistrate, Theni, had ordered the trial.



2.4. During trial, the prosecution examined witnesses P.W-1 to P.W-11 and marked documents Ex.P-1 to Ex.P-10. The prosecution was closed with P.W-11 and Ex.P-10 and no witness was examined on the side of the accused.

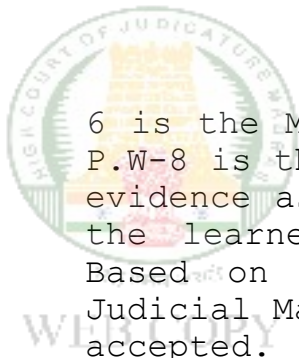
2.5. After hearing the prosecution and the defence and on perusal of the entire materials available before the learned Chief Judicial Magistrate, the learned Chief Judicial Magistrate had arrived at a conclusion that the charges framed against the accused under Sections 337 (3 Counts), 279(1) and 304 (A) (1 Count) of IPC had been proved by the prosecution. Therefore, the learned Chief Judicial Magistrate had convicted the accused to undergo six months Simple Imprisonment and to pay a fine of Rs.500/-, in default, to undergo One month Simple Imprisonment for the offence under Section 279 of IPC and to undergo six months Simple Imprisonment and to pay a fine of Rs.500/-, in default, to undergo One month Simple Imprisonment for each counts, for the offence under Section 337 (3 Counts) of IPC and to undergo two years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six month Simple Imprisonment for the offence under Section 304 (A) of IPC.

2.6. Aggrieved by the judgment of conviction recorded by the learned Chief Judicial Magistrate, Theni, in C.C.No.39 of 2013, the sole accused had preferred the Criminal Appeal in C.A.No.33 of 2014 before the learned Additional District and Sessions Judge, Theni at Periyakulam.

2.7. On appearance of the appellant/accused and after hearing the arguments of the learned counsel for the appellant/accused and the prosecution, the learned Additional District and Sessions Judge, Theni at Periyakulam, had on appreciation of the materials available, accepted the reasoning given by the learned Chief Judicial Magistrate in convicting the accused under Sections 304 (A), 279 (1 Count), 337 (3 Counts) of IPC and confirmed the finding of guilt recorded by the learned Chief Judicial Magistrate, Theni.

3. Aggrieved by the dismissal of the appeal, the sole accused had preferred this Criminal Revision Case.

4. Mr.D.Srinivasaragavan, learned counsel for the Revision Petitioner had submitted his written arguments. As per his written arguments, the trial Court failed to appreciate the fact that the prosecution witness had not deposed cogently to prove the charges against the accused. P.W-1 had in his evidence deposed that he fell on the road and became unconscious. However, while giving complaint, he mentioned the name of the Auto Rickshaw Driver and the Auto Rickshaw Number, that part of the evidence cannot be accepted. Also, witnesses had not spoken cogently against the accused. There is no proof regarding the negligent driving of the accused. P.W-1 to P.W-3 are injured witnesses, P.W-4 and P.W-5 are eye witnesses, P.W-



6 is the Mahazar witness, P.W-7 is the Motor Vehicle Inspector and P.W-8 is the Doctor. Both the Courts below failed to appreciate the evidence as per the Indian Evidence Act. Therefore, the finding of the learned Additional District and Sessions Judge is perverse. Based on the deposition of P.W-1 to P.W-8, the learned Chief Judicial Magistrate had convicted the accused which cannot at all be accepted. On the date of occurrence, there was a huge gathering of people on the eve of temple festival and at that time, the Auto-rickshaw driver drove the vehicle in a rash and negligent manner cannot at all be accepted. The arrest was much prior to the registration of FIR. After fixing the accused, the investigation was proceeded. Therefore, the prosecution case cannot at all be accepted. The Courts below convicted the accused based on mere surmises and conjectures. Only to get compensation from the Motor Accident Claim Cases, a false case has been foisted. Therefore, the learned counsel for the Revision Petitioner prays this Court to set aside the Judgment of conviction and order of sentence imposed on the accused by the Court of learned Chief Judicial Magistrate.

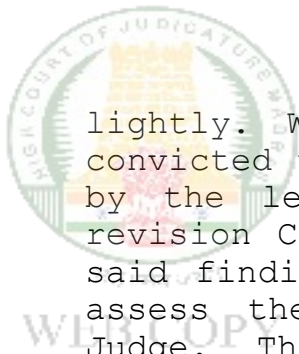
5. The learned Government Advocate (Crl. Side) had rejected the argument of the learned counsel for the Revision Petitioner and submitted that when two Courts had given a finding, the Revision Court shall not interfere with the finding of the trial Court. The Revision Court exercise its discretion on a narrow compass. 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**, the Revision Court cannot go into the concurrent findings. The relevant portion of the said decision is extracted 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."

6. Point for Consideration

Whether the judgment of conviction recorded by the learned Additional District and Sessions Judge, Theni at Periyakulam in C.A.No.33 of 2014 dated 15.12.2016 confirming the Judgment and Sentence imposed upon the petitioner in C.C.No.39 of 2013 dated 03.07.2014 by the learned Chief Judicial Magistrate, Theni is perverse warranting interference by this Court as Revisional Court?

7. On perusal of the records, it is found that all the witnesses had spoken cogently. P.W-1 to P.W-3 are injured witnesses and therefore, their evidences are reliable which cannot be rejected



lightly. When the trial Court had appreciated the evidence and convicted the accused, the appellate Court upheld the finding given by the learned Chief Judicial Magistrate. In such cases, the revision Court even though as High Court cannot interfere with the said findings. The Appellate Court alone has a discretion to re-assess the entire materials available before the learned trial Judge. The Revision Court exercise its discretion only in a narrow compass. Only when there is a violation of laid down principles of the Hon'ble Supreme Court and if the finding of the trial Court is perverse, the Revision Court can exercise its discretion. Here, the finding of the learned Chief Judicial Magistrate is not perverse, the same had been re-assessed by the learned Additional District and Sessions Judge, Theni and arrived at a conclusion that the appeal lacks merits and hence, it was dismissed.

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

9.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 a learned Appellate Judge is perverse, Revision Court can exercise its discretion. The power of revision is on a narrow compass.

10.The accused has to explain the circumstances under which the injured witnesses had not spoken about any other person except the accused. It is for the accused to prove the suspicion that he had not knocked them down. Here, there is evidence of P.W-1 to P.W-11 that the accused had knocked them down and caused injuries. The evidence of injured witnesses against the accused has more weightage. Therefore, the evidence of P.W-1 to P.W-3 have to be accepted.

11.The point for consideration is answered in favour of the prosecution and against the Revision Petitioner/Accused. The judgment of conviction recorded by the learned Additional District and Sessions Judge, Theni at Periyakulam in C.A.No.33 of 2014 dated 15.12.2016, confirming the Judgment and Sentence imposed upon the



petitioner in C.C.No.39 of 2013, dated 03.07.2014 by the learned Chief Judicial Magistrate, Theni, is not perverse warranting interference by this Court.

In the result, this Criminal Revision Petition is dismissed as having no merits.

The judgment of conviction recorded by the learned Additional District and Sessions Judge, Theni at Periyakulam in C.A.No.33 of 2014 dated 15.12.2016 confirming the Judgment and Sentence imposed upon the petitioner in C.C.No.39 of 2013 dated 03.07.2014 by the learned Chief Judicial Magistrate, Theni, is confirmed.

The learned Chief Judicial Magistrate, Theni, is directed to issue warrant to secure the petitioner/accused to undergo the remaining period of sentence. The period of detention already undergone by the appellant/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 Additional District and Sessions Judge,
Theni at Periyakulam.
2. The Chief Judicial Magistrate, Theni.
3. The Sub Inspector of Police,
Palanichettipatty Police Station,
Theni District.
- 4.The Additional Public Prosecutore,
Madurai Bench of Madras High Court, Madurai.

CRL.RC.(MD)No. 523 of 2017
08.10.2021

RD/PM (18.11.2021) 6P 5C