



BAIL SLIP

The Revision Petitioner/Accused Viz., K.Lalitha, W/o.Krishnan was released on bail vide order of this Court dated 27.02.2017 made in Crl.M.P(MD).No.591 of 2017 in Crl.RC(MD).No.55 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.09.2021

Delivered on : 23.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.(MD)No.55 of 2017

K.Lalitha .. Revision Petitioner / Appellant /
Sole Accused

Vs.

State, through the
Sub-Inspector of Police,
Melur Police Station,
Madurai District.

(Crime No.924 of 2012) .. 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 dated 16.12.2016, passed in Crl.A.No.18 of 2014, by the learned I Additional District and Sessions Judge, Madurai, confirming the conviction and sentence dated 28.02.2014, passed in S.T.C.No.216 of 2013, by the learned Judicial Magistrate, Melur.

For Petitioner	: Mr.T.Lajapathi Roy
For Respondent	: Mr.M.Muthumanikkam
	Government Advocate
	(Criminal side)

ORDER

Aggrieved over the concurrent findings dated 16.12.2016, made in Crl.A.No.18 of 2014, on the file of the learned I Additional District and Sessions Judge, Madurai, who confirmed the conviction and sentence, dated 28.02.2014, passed in S.T.C.No.216 of 2013, on the file of the Judicial Magistrate Court, Melur, the revision petitioner, who is the sole accused, preferred this Criminal Revision praying to set aside the conviction and sentence awarded

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2.The accused in S.T.C.No.216 of 2013 on the file of Judicial Magistrate Court, Melur, is the revision petitioner herein. She stood charged for the offence punishable under Sections 427 and 506(i) I.P.C. After full-fledged trial, the learned Judicial Magistrate, Melur, came to the conclusion that the revision petitioner is found guilty under Section 427 I.P.C. and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for two months. In respect of the offence under Section 506(i) I.P.C., she was acquitted from the charges. Challenging the said conviction and sentence, the petitioner preferred an appeal before the learned I Additional District and Sessions Judge, Madurai, in Crl.A.No.18 of 2014, wherein, by judgment, dated 16.12.2016, the findings arrived at by the trial Court were confirmed and ultimately, the appeal has been dismissed.

3.In the said circumstances, to check the correctness of those judgments, the revision petitioner is before this Court with this Criminal Revision.

4.The history of the case projected by the prosecution is that on 27.12.2012 when P.W.1/de-facto complainant went to attend coolie work, around 01.00 p.m., he received a message from P.W.3 - Araammal, who is his sister, as the accused herein demolished his house. Immediately, P.W.1 returned to his house and on enquiry, his father P.W.2 - Muniyandi informed that the accused even after the request made by him, damaged the house. In the meantime, the Village people secured the accused along with J.C.B., which is used to demolish the house. Thereafter, P.W.1 lodged a complaint under Ex.P.1 before P.W.9.

4.1. P.W.9 - Looyees Vincent, the then Sub-Inspector of Police, Melur Police Station, on 27.12.2012 around 09.00 p.m., while he was on duty, received the complaint, registered a case in Crime No.924 of 2012 for the offence punishable under Sections 427 and 506(i) I.P.C. The printed F.I.R. is marked as Ex.P.6. On the next day around 08.00 a.m., he visited the scene of occurrence and in the presence of the witnesses, he prepared an Observation Mahazar and Rough Sketch under Exs.P.3 and P.7 respectively. In the presence of the same witnesses, he recovered the damaged tiles under Ex.P.5 - Recovery Mahazar. He examined the witnesses and recorded their statements. On 31.12.2012 around 04.00 p.m., near Vaira Vilas Hotel, he recovered the JCB vehicle, bearing Registration No.TN-59-AZ-6963, which was used for demolishing the house of P.W.1. Further, he recovered the Photographs and C.D., which was taken in the occurrence place, from P.W.1. Ultimately, he came to the conclusion that the accused had



committed an offence and liable to be convicted under Sections 427 and 506(i) I.P.C. He filed final report accordingly.

5.From the above materials, the learned Judicial Magistrate, Melur, examined the accused in terms of Section 251 Cr.P.C. The accused pleaded not guilty and opted for trial. Hence, in order to prove their case, on the side of the prosecution, 9 witnesses have been examined as P.W.1 to P.W.9 and 7 documents were marked as Exs.P.1 to P.7.

(i) Out of the said witnesses, P.W.1 - Packiyam, who is the de-facto complainant, speaks about the occurrence as, on 27.12.2012, after receiving information from P.W.3, he came to the occurrence place and came to know that the accused by saying that the said house belongs to her, damaged the house and therefore, he lodged a complaint.

(ii) P.W.2 - Muniyandi is the father of P.W.1. He speaks about the occurrence as during the time of occurrence, he was inside the house and only after hearing noise from the falling tiles, he came out from the house and at that time, the accused criminally intimidated him as she would kill him.

(iii) P.W.3 - Aarammal, P.W.4 - Chinnathambi and P.W.5 - Sevagan are residing in the same Village. They spoke about the occurrence as during the relevant point of time, the accused herein by engaging the JCB, damaged the house, which belongs to P.W.1.

(iv) P.W.6 - Pathinettan and P.W.7 - Moorthy are the witnesses to the Observation Mahazar and Recovery Mahazar. They spoke about the preparation of those documents as the same has been prepared by the Investigation Officer in their presence.

(v) P.W.8 - Ayyanar, who is the driver of J.C.B., gave evidence as during the relevant point of time, the accused engaged him to damage P.W.1's house by saying that the said house belongs to her. He would further state that by believing the said words, he demolished the house, wherein the Villagers had rounded him.

6.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same as false. However, she did not choose to examine any witness nor mark any document on her side.

7.Having considered all the materials placed, the trial Court convicted and sentenced the accused as stated in paragraph No.2 of



this order. Challenging the same, the accused had preferred an appeal before the learned I Additional District and Sessions Judge, Madurai, wherein, by judgment dated 16.12.2016, the conviction and sentence imposed on the accused was confirmed. Aggrieved over the concurrent findings of the Courts below, the accused is before this Court with this Criminal Revision.

8.I have heard Mr.T.Lajapathi Roy, learned counsel appearing for the revision petitioner and Mr.M.Muthumanikkam, learned Government Advocate (Criminal side) appearing for the respondent police.

9.The learned counsel appearing for the revision petitioner would contend that before the occurrence, in respect of title pertains to the damaged house, the accused herein filed a Civil Suit, wherein, on 18.10.2011, an injunction was granted and thereafter, on 27.12.2012, the alleged occurrence had happened. He would further submit as being the reason that an injunction was granted by the Civil Court in favour of the accused, it can be termed that the accused alone was in possession of the disputed property. Though P.W.1 / de-facto complainant, who lodged the complaint against the accused stating that the accused is a trespasser and not having any title and possession over the suit schedule property, only on the strength of injunction granted by the Civil Court, the accused used minimum force to evict P.W.1 from the suit schedule property. He would further submit that without understanding the position of law, this case has been foisted against the accused, which is erroneous in law. Further, the Courts below without considering the said aspect convicted the accused and the same is liable to be set aside.

10.Per contra, the learned Government Advocate (Criminal side) appearing for the respondent police would submit that though it was stated on the side of the revision petitioner that the property in dispute is in possession of the accused, in order to prove the same, no document has been produced before the trial Court. Further, the Villagers, who are not having any previous enmity with the accused, gave evidence in support of the case of prosecution as during the relevant point of time, the accused by engaging J.C.B. demolished the house, which belongs to P.W.1. He would further submit that P.W.8, who is the driver of J.C.B. has clearly narrated the occurrence that only the accused had engaged him to demolish the house by saying that the said house belongs to her. Accordingly, in the absence of title and possession, the accused is not having any right to demolish the house and therefore, the findings arrived at by the Courts below are within the frame work of Section 427 I.P.C. and thereby, the same cannot be interfered with.



11.I have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

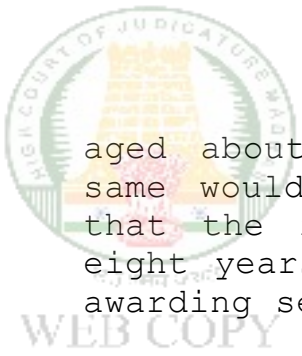
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12.It is true before the trial Court, the documents prepared during the time of investigation alone were marked as Ex.P.1 to Ex.P.7. In otherwise, no document has been marked on the side of the accused to prove the fact that the property in dispute was in her possession. Therefore, I am of the considered opinion that without any substantial evidence, arguing as above that the accused was in possession of the disputed property cannot be accepted.

13.In otherwise, on going through the judgment rendered by the trial Court, it is apparent that the witnesses examined as P.W.3 to P.W.5, who are neighbouring house owners, state that the damaged property was in the possession of P.W.1. Apart from that, P.W.8 - Driver of J.C.B., who gave evidence in support of the prosecution that during the relevant point of time, the accused had engaged him for cleaning the property and instructed him to demolish the house in the question. Therefore, after telling lie before P.W.8 as the house in dispute belongs to her, the accused demolished the property. Hence, the evidences given by the prosecution witnesses are in support of the case of prosecution. In otherwise, even single contradiction has not been elucidated on the side of the accused to suspect the case of prosecution. As per Section 397(1) Cr.P.C., the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court. However, as per Section 401 Cr.P.C., in the case of any proceeding the record of which has been called for or which otherwise comes to its knowledge, the High Court may in its discretion, exercise any of the powers conferred on a Court of Appeal. In such occasion, as already decided, the averments found in the First Information Report was corroborated through the evidence of P.W.1 and also the evidence given by P.W.1 was corroborated through the evidence given by the Villagers as well as the evidence given by P.W.8. Accordingly, this Court endorsed the findings arrived at by the Courts below as the accused is liable to be convicted under Section 427 I.P.C.

14.In this occasion, the learned counsel appearing for the revision petitioner would contend that the accused being the lady,

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aged about 50 years, if sentenced to undergo imprisonment, the same would affect her entire family. He would further contend that the revision petitioner is facing this case for the past eight years and thereby, it is necessary to show some leniency in awarding sentence.

15. In this regard, the learned counsel appearing for the petitioner relied on the following judgments:-

(i) Ankush Shivaji Gaikwad Vs. State of Maharashtra reported in 2013 (6) SCC 770

(ii) Jage Ram and others Vs. State of Haryana reported in 2015 (11) SCC 366

(iii) Vinay and others Vs. State of Karnataka and another reported in 2015 (11) SCC 612

(iv) Natabar Sahu Vs. Radhamohan Sahu and others reported in 1969 Cri.L.J. 1260

(v) M.Mani and others Vs. The State of Tamil Nadu, Inspector of Police, Narikudi Circle, A.Mukkulam Police Station, Virudhunagar District and another [Crl.R.C.(MD)No.686 of 2011, dated 12.07.2019]

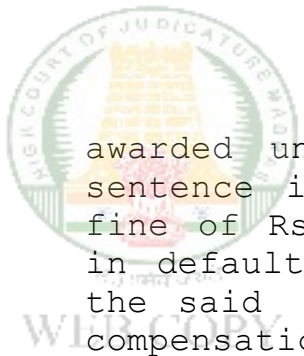
(vi) Ashok Kumar @ Anthony Samy Vs. State, Through the Inspector of Police, Sivalaperi Police Station, Tirunelveli [Crl.A.(MD)No.340 of 2009, dated 19.11.2019]

(vii) Baskar Vs. State, Rep by Inspector of Police, All Women Police Station, Pudukkottai, Thoothukudi District [Crl.R.C.(MD) No.187 of 2012, dated 13.12.2018].

16. Now, on considering the said submissions with the observations made in the above referred judgments, it appears that in all the above cases, the accused therein had committed various offences and sentenced to undergo imprisonment with fine, but those cases are not related to Section 427 I.P.C.

17. However, on going through the materials available on record, it seems that it was alleged that the property worth about Rs.50,000/- was damaged during the time of occurrence. On the other hand, as per Section 427 I.P.C., whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

18. In the said circumstances, I am of the view that sentencing the accused to jail is not necessary, however, imposing fine and ordering compensation more than the value of the damaged property are sufficient to meet the ends of justice. Accordingly, this Criminal Revision is partly allowed, confirming the conviction



awarded under Section 427 I.P.C. by the Courts below and the sentence is modified directing the revision petitioner to pay a fine of Rs.75,000/-, less the amount, if any, already deposited, in default, to undergo one month simple imprisonment and out of the said Rs.75,000/-, Rs.70,000/- is ordered to be paid as compensation to P.W.1 / de-facto complainant [Packiyam].

Sd/-

Assistant Registrar (CS I)

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/ /2021

Sub Assistant Registrar(CS)

To

1.The I Additional District and Sessions Judge,
Madurai.

2.The Judicial Magistrate,
Melur.

3.Do-Through The Chief Judicial Magistrate,
Madurai District.

4.The Sub-Inspector of Police,
Melur Police Station,
Madurai District.

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

Copy to

1)The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.

2)P.W.1-Packiyam - Defacto Complainant
Through - The Chief Judicial Magistrate,
Madurai District.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-30191[F] dated
24/09/2021)

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23.09.2021

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