



BAIL SLIP

The Petitioner / Accused Thangam, S/o.Thiraviyam was directed to be released on Bail vide Order of this Court dated 14.11.2017 and made in Crl.MP(MD).10341 of 2017 in Crl.RC.(MD) 838 of 2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.06.2021

DELIVERED ON : 01.10.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.R.C.(MD)No.838 of 2017

Thangam
S/o. Thiraviyam : Petitioner/Appellant/Accused

Vs.

State Rep. By its
The Inspector of Police,
Mudhukulathur Police Station,
Mudhukulathur,
Ramanathapuram District.
(Crime No.170 of 2013) : 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 rendered by the learned Sessions Judge, Additional District-cum-Fast Track Court, Paramakudi, Ramanathapuram District in C.A.No.6 of 2016 dated 05.09.2017 confirming the Judgment in C.C.No.271 of 2013 on the file of the Judicial Magistrate, Mudhukulathur, Ramanathapuram District dated 31.03.2016 and set aside the same.

For Petitioner : Mr.V.P.Rajan
For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.side)

O R D E R

This petition has been filed to set aside the Judgment of Conviction recorded by the learned Sessions Judge, Additional District-cum-Fast Track Court, Paramakudi, Ramanathapuram District in C.A.No.6 of 2016 dated 05.09.2017 confirming the Judgment in C.C.No.271 of 2013 on the file of the learned Judicial Magistrate, Mudhukulathur, Ramanathapuram District dated 31.03.2016.



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

2.1. On 28.09.2013 at about 6.00 p.m., when P.W-1-Sampath was involved in construction of compound wall around his house. Accused 1 to 3, who are neighbours, came there and abused him in filthy language by uttering "You bastard, are you constructing the compound Wall in our place?" and prevented P.W-1 from proceeding further with the construction of the compound wall. By saying so, the accused-A1 caused cut injury on the wrist of P.W-1 by using billhook. A-1 to A-3 threatened him with dire consequences. Due to the injuries suffered by him, P.W-1 was admitted in the Government Hospital, Mudhukulathur. Thereafter he was sent to Government Hospital, Ramanathapuram for further treatment. On receipt of information from the Government Hospital, Mudhukulathur, P.W-8-Saravanan, Sub-Inspector of Police, went to Government Hospital, Ramanathapuram and recorded the statement of P.W-1. Thereafter, based on the statement of P.W-1, P.W-8 registered an FIR under Ex.P-5 in Cr.No.170 of 2013 for the offences under Sections 294 (b), 341, 324 and 506 (ii) of IPC. The original complaint under Ex.P-1 and the original FIR under Ex.P-5 were sent to the learned Judicial Magistrate, Mudhukulathur. He also visited the place of occurrence and prepared the Observation Mahazar under Ex.P-6 and Rough Sketch under Ex.P-7 in the presence of witnesses viz., P.W-5-Kathirvel and P.W-9-Uma Maheshwaran. He had examined the witnesses including the Doctor at Government Hospital, Ramanathapuram regarding the injuries suffered by P.W-1 and the treatment given to him. He had arrested the Accused and forwarded the Accused to remand along with remand request report to the Court of learned Judicial Magistrate, Mudhukulathur. After completion of the investigation, he laid the final report of the investigation under Section 173 of Cr.P.C., against the accused attracting the offences under Sections 294 (b), 341, 326 and 506 (ii) of IPC before the Court of learned Judicial Magistrate, Mudhukulathur.

2.2.Taking cognizance of the offences, the learned Judicial Magistrate, Mudhukulathur numbered the case as C.C.No.271 of 2013. The learned Judicial Magistrate on assessment of evidence had convicted the first accused/the petitioner herein under Section 326 of IPC and acquitted the accused 2 and 3 from all the charges. Aggrieved against the same, the first Accused/Petitioner herein had preferred appeal in C.A.No.6 of 2016 before the Additional District-cum-Fast Track Court, Paramakudi. The appeal was also dismissed by the learned Sessions Judge, Additional District-cum-Fast Track Court, Paramakudi.

3.Aggrieved by the judgment of conviction by the learned Judicial Magistrate, Mudhukulathur in C.C.No.271 of 2013 which was confirmed by the learned Additional District-cum-Fast Track Judge, Paramakudi in C.A.No.6 of 2016, this Revision Case had been filed



4.The learned Counsel for the Revision Petitioner submitted that the trial Judge as well as the Appellate Judge failed to appreciate the facts. The provisions of Section 326 of IPC would not be attracted against the accused in this case. Therefore, the judgment of conviction and sentence imposed on the Accused/Petitioner under Section 326 of IPC is perverse and is to be set aside.

5.The learned Government Advocate (Crl. Side) by way of reply disputed the arguments of the learned counsel for the Revision Petitioner stating that the High Court as Revision Court cannot assess the evidence as the focus of Revision Court is on a narrow compass and 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 wherein it was held that the Revision Court cannot go into the concurrent findings:

"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, this Revision has no merit and it has to be dismissed.

6.Perused the judgment of the learned trial Judge/Judicial Magistrate, Mudhukulathur in C.C.No.271 of 2013 and the evidence of the witnesses particularly injured witness P.W-1-Sampath and the evidence of Doctors viz., P.W-6-Dr.Chidambaram and P.W-7-Dr.Tamilselvi.

7.Point for Consideration:

Whether the judgment of conviction recorded by the learned trial Judge/Judicial Magistrate, Mudhukulathur in C.C.No.271 of 2013 and confirmed by the learned Sessions Judge, Additional District-cum-Fast Track Court, Paramakudi in C.A.No.6 of 2016 is perverse warranting interference by this Court as Revision Court?

8.The present case arose out of civil dispute. The prosecution witness had raised a compound wall which was objected to by the accused party which was the origin of this case. Based on a civil dispute, the criminal case had arisen. The evidence of prosecution witnesses are found cogent. Therefore, the learned Judicial Magistrate, Mudhukalathur had convicted the first accused alone for the offence under Section 326 of IPC and acquitted the other accused on proper appreciation of evidence.



9.The accused had preferred the Criminal Appeal before the Court of Additional District and Sessions Judge, Fast Track Court where the learned Sessions Judge in C.A.No.6 of 2016 had assessed the evidence and confirmed the conviction and sentence imposed on the Petitioner/Accused by the learned Judicial Magistrate, Mudhukulathur in C.C.No.271 of 2013 and dismissed the appeal.

10.Aggrieved by the said judgment the Accused/Petitioner is before this Court by way of Revision. As rightly pointed out by the learned Government Advocate (Crl. Side), the Revision Court exercising revisional jurisdiction is limited as not to reassess the evidence, unless the finding is perverse. However, the grievance of the Revision Petitioner in the present case that the offence under Section 326 of IPC would not be attracted against him. The learned Sessions Judge, Additional District and Sessions Judge, Fast Track Court at Paramakudi had failed to appreciate the evidence regarding the ingredients of Section 326 of IPC. Therefore, the finding of guilt recorded by the learned Judicial Magistrate, Mudhukulathur in C.C.No.271 of 2013 convicting the accused for the offence under Section 326 of IPC and sentencing him for one year Rigorous Imprisonment and fine of Rs.2,000/- is perverse.

11. It is relevant to extract Section 320 of IPC which defines "Grievous Hurt" as under:

320. Grievous hurt.—The following kinds of hurt only are designated as "grievous":—

(First)— Emasculation.

(Secondly)—Permanent privation of the sight of either eye.

(Thirdly)— Permanent privation of the hearing of either ear,

(Fourthly)—Privation of any member or joint.

(Fifthly)— Destruction or permanent impairing of the powers of any member or joint.

(Sixthly)— Permanent disfiguration of the head or face.

(Seventhly)—Fracture or dislocation of a bone or tooth.

(Eighthly)—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.



12. The mere mention of the fact that cut injury caused by the act of the accused on the wrist of P.W-1/injured was mentioned as grievous by P.W-6 and P.W-7 who had treated P.W-1 had not mentioned anything in their evidence regarding privation of any member or joint/Destruction or permanent impairing of the powers of any member or joint fracture or dislocation of bone, disfigurement of wrist as explained/defined under Section 320 of IPC so as to attract offences under Section 326 of IPC. Therefore, strictly speaking, ingredients relating to disfigurement of his hand and loss of palm were not stated. Therefore, the conviction imposed under Section 326 of IPC would not be attracted against the Petitioner/Accused. Even though charge is framed under Section 326 of IPC, the Court on appreciation of evidence could have imposed lesser punishment without altering charge for the offence either under Section 325 or 326 of IPC. The evidence is available that the accused caused injuries on the wrist of P.W-1/injured. That is proved through medical evidence of Doctors who had issued medical certificates. Therefore, the conviction recorded by the learned trial Judge/Judicial Magistrate, Mudhukulathur, imposing sentence under Section 326 of IPC can be altered into a lesser offence under Section 324 of IPC.

13. The point for consideration is answered partly in favour of the Revision Petitioner and against the Prosecution. The judgment of conviction recorded by the learned trial Judge/Judicial Magistrate, Mudhukulathur in C.C.No.271 of 2013 and confirmed by the learned Sessions Judge, Additional District and Sessions Judge, Fast Track Court, Paramakudi in C.A.No.6 of 2016 is perverse warranting interference by this Court.

In the result, the Revision is partly allowed.

The conviction recorded by the learned Judicial Magistrate, Mudhukulathur and upheld by the learned Additional District and Sessions Judge, Fast Track Court, Paramakudi, Ramanathapuram, is modified as offence under Section 324 of IPC. The fine already imposed for the offence under Section 326 of IPC is treated as fine for the altered offence under Section 324 of IPC and the sentence of imprisonment for the offence under Section 326 of IPC is modified as that of the period of detention already undergone by the accused.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Sessions Judge,
Additional District-cum-Fast Track Court,
Paramakudi, Ramanathapuram.
2. The Judicial Magistrate,
Mudhukulathur.
3. The Chief Judicial Magistrate,
Ramanathapuram District.
4. The Inspector of Police,
Mudhukulathur Police Station,
Mudhukulathur, Ramanathapuram District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
Crl.R.C.(MD)No. 838 of 2017

01.10.2021

USK (31.12.2021) 6P 6C