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Crl.RC.No.13 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM:

THE HON'BLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.13 of 2018

1.Venkatesan @ Vengai Venkatesan

2.T.Murugesan

...

Petitioners

Vs

State Represented by its:

Inspector of Police,

Denkanikottai Police Station

Crime No.32/2009

...

Respondent

Prayer : Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to call for the records in S.C.No.17 of 2011 dated 19.06.2014 on the file of the learned Assistant Sessions Judge, Hosur, Krishnagiri District and confirmed in Crl.A.No.36 of 2014 on the file of the District and Sessions Judge, Hosur and set aside the said conviction and sentence.

For Petitioners : Mr.D.Manoharan

For Respondent : Mr.A.Gopinath

Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case has been filed against the Judgment dated

14.12.2017 made in Crl.A.No.36 of 2014 passed by the District and Sessions



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Judge, Hosur, thereby confirming the order dated 19.06.2014 made in S.C.No.17 of 2011 passed by the learned Assistant Sessions Judge, Hosur, Krishnagiri District, thereby convicted the petitioner for the offence punishable under Section 394 of IPC and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months rigorous imprisonment.

2. The case of the prosecution is that on 14.10.2008, when the victim was coming by his motor cycle, the accused attacked him and robbed a sum of Rs.3,000/- and flew away. On the complaint, the respondent registered an FIR in Crime No.193 of 2008 for the offence punishable under Section 394 of IPC as against three accused persons, in which, the petitioner is arrayed as A1. After completion of investigation, the respondent filed final report and the same has been taken cognizance for the offence punishable under Section 394 read with 397 of IPC.

3. On the side of the prosecution, they examined P.Ws.1 to 9 and marked Exs.P1 to P9. The prosecution has also produced M.O.1. On the side of the defence, no one was examined and no document was produced before the Trial Court.



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4. On perusal of the oral and documentary evidence, the Trial Court convicted the petitioner for the offence punishable under Section 394 of IPC and he was sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months rigorous imprisonment and acquitted the petitioner for the offence punishable under Section 394 read with 397 of IPC. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed and the order of the Trial Court was confirmed. Hence, the present revision.

5. The learned counsel appearing for the petitioner submitted that the third accused died and the entire charges stands abated against him. Pending revision, the parties viz., the petitioner and the defacto complainant have entered into a comprise and amicably settled the issue. The defacto complainant was present before this Court and filed an affidavit, which reads as follows :

“2. I submit that I am running a provisional store at Marasathiram, Denkanikottai, Krishnagiri District. The said offence took place on 14.10.2008 at 10.00 p.m.

3. I submit that there was a civil dispute existing between myself and Chikkana, the father in law of Babu (A2 in



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Crl.A.No.36 of 2018) on the file of the District and Sessions Judge, Hosur) at the time of the offence. A1 and A3 accompanied with A2 because there was a family dispute between A2. Babu and his father in law, Chikkanna.

4. I submit that there was small quarrel between myself and Babu, A2 and pushing and pulling with one another. There were simple and minor injuries on both sides. Based on the complaint given by me, an FIR in Crime No.193 of 2008 was registered by the respondent police and a case was filed in S.C.No.17 of 2011, on the file of the Assistant Sessions Court, Hosur, Krishnagiri District. The accused, A1-A3 were convicted for the offence under Section 394 of IPC and sentenced to undergo 3 years RI and to pay a fine of Rs.1,000/- each, in default to undergo 6 months RI by the learned Asst.Sessions Court, Hosur, Krishnagiri District in S.C.No.17 of 2011, dated 19.06.2014 and confirmed by the learned District and Sessions Judge, Hosur in Crl.A.No.36/2014 dated 14.12.2017.

5. I submit that later on the dispute between myself and Chikkanna, father in law of the A2, was settled amicably and we have been maintaining the good relationship with one another. I have come to know that A1 and A3 are peasant, daily wage workers having children and have had good record in and around their locality. They have no any kind of antecedents except this case to the best of my knowledge. Hence, I have filed this affidavit.”



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6. It reveals that there was a civil dispute between the petitioner and the defacto complainant in respect of their land. Due to which, a false complaint has been lodged as against the petitioner. That apart, the prosecution also failed to prove the charge for the offence under Section 394 of IPC.

7. On perusal of the FIR, which was marked as Ex.P7, revealed that all the accused persons were known to the defacto complaint. Therefore, the respondent straight away lodged a complaint and FIR has been registered. After completion of investigation, the respondent filed a final report and the same has been taken cognizance by the Trial Court. However, the respondent failed to recover the robbed amount of Rs.3,000/- from the accused persons. It is fatal to the case of the prosecution. The Courts below, without considering the above, mechanically convicted the petitioner for the offence under Section 394 of IPC. Considering the circumstances and also the fact that a settlement had been arrived at between the parties, the conviction passed as against the petitioner cannot be sustained and it is liable to be set aside.



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8. In view of the above, the Judgment dated 14.12.2017 made in Crl.A.No.36 of 2014 passed by the District and Sessions Judge, Hosur, and the order dated 19.06.2014 made in S.C.No.17 of 2011 passed by the learned Assistant Sessions Judge, Hosur, Krishnagiri District, are hereby set aside. The petitioner/accused is acquitted of all charges in S.C.No.17 of 2011 on the file of the Assistant Sessions Judge, Hosur, Krishnagiri District. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

9. Accordingly, this Criminal Revision stands allowed.

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Index: Yes/No
Speaking / Non Speaking Order

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To

- 1.The Assistant Sessions Judge,
Hosur, Krishnagiri District.
2. The District and Sessions Judge,
Hosur
3. The Inspector of Police,
Denkanikottai Police Station
4. The Public Prosecutor,
High Court of Madras, Chennai.



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