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Crl.RC.Nos.882 & 1116 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.RC.Nos.882 & 1116 of 2018 and  
Crl.MP.Nos.10022 of 2018

Crl.RC.No.882 of 2018

1.Nagamani  
2.Katru Perumal

... Petitioners/A2 & 3

Versus

State by Inspector of Police,  
Peranamallur Police Station,  
Tiruvannamalai District  
crime No.244 of 2006

...

Respondent

PRAYER:

Criminal Revision has been filed under Sections 397 and 401 of the Code of Criminal Procedure to call for the records of the learned Assistant Sessions Judge, Cheyyar, Tiruvannamalai District and to set aside the judgment of the lower trial court in SC.No.88 of 2007 dated 11.09.2008 as confirmed by the appellate court made in CA.No.36 of 2008 by the



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judgment dated 07.07.2018 on the file of the learned Additional District Sessions Judge, (Fast Track Court) Arani, Tiruvannamalai District in dismissing the appeal filed by them and confirming the conviction and sentence passed by the trial court.

For Petitioners : Mr.L.Mahendran  
For Respondent : Mr.A.Gopinath,  
Government Advocate(crl.side)

Crl.RC.No.1116 of 2018

Kalaimani

... Petitioner/A1

Versus

State by Inspector of Police,  
Peranamallur Police Station,  
Tiruvannamalai District  
crime No.244 of 2006

... Respondent

PRAYER:

Criminal Revision has been filed under Sections 397 and 401 of the Code of Criminal Procedure to call for the records of the learned Assistant Sessions Judge, Cheyyar, Tiruvannamalai District and to set aside the judgment of the lower trial court in SC.No.88 of 2007 dated 11.09.2008 as confirmed by the appellate court made in CA.No.36 of 2008 by the



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judgment dated 07.07.2018 on the file of the learned Additional District Sessions Judge, (Fast Track Court) Arani, Tiruvannamalai District in dismissing the appeal filed by them and confirming the conviction and sentence passed by the trial court.

For Petitioner : Mr.L.Mahendran  
For Respondent : Mr.A.Gopinath,  
Government Advocate(crl.side)

### **COMMON ORDER**

These criminal revisions have been filed as against the judgment dated 07.07.2018 passed in CA.No.36 of 2008 on the file of the learned Additional District Sessions Judge, (Fast Track Court) Arani, Tiruvannamalai District, thereby partly allowed the appeal and confirmed the conviction and sentence in respect of the petitioners herein in the judgment passed by the learned Assistant Sessions Judge, Cheyyar, Tiruvannamalai District in SC.No.88 of 2007 dated 11.09.2008, thereby convicted all the accused persons for the offence punishable under Section 436 of IPC and 436 r/w 34 of IPC respectively.



2. The case of the prosecution is that due to previous enmity, the first accused threatened the defacto complainant that he will set fire on their tea shop. Immediately, it was informed to his brother and as per his instruction, the defacto complainant and his wife went to their tea shop and stayed there on 26.08.2006. At about 10.30 p.m. on the same day, after hearing noise, the defacto complainant woke up and noticed that the accused persons set fire on their tea shop. Immediately, the defacto complainant and his wife came out of the tea shop and escaped from fire injury. Immediately, the general public came for their rescue and informed to the fire station. However, the shop was burnt and caused damages to the tea shop. On receipt of complaint, the respondent registered FIR in crime No.12 of 2007 for the offence punishable under Section 436 r/w 34 of IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the trial court in SC.No.88 of 2007 for the offence under Section 436 r/w 34 of IPC.

3. On the side of the prosecution, PW1 to PW9 were examined and Ex.P1 to Ex.P6 were marked and on the side of the accused persons, no



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one was examined and no documents were marked. On perusal of oral and documentary evidence, the trial court convicted all the accused persons for the offence punishable under Section 436 of IPC r/w 34 of IPC. Aggrieved by the same, all the accused persons preferred appeal and the same was partly allowed and thereby confirmed the conviction and sentence imposed on A1 to A3 and reduced the sentence alone in respect of A4 to the period already undergone by him. Aggrieved by the same, the present criminal revision have been filed.

4. The learned counsel for the petitioners would submit that even according to the case of the prosecution, due to previous enmity, a false case has been foisted as against the petitioners. PW1 was in the habit of lodging false complaint. In fact, previously he lodged complaint as if his cattle shed was set fire by the accused persons. Admittedly, PW1 is one of the witnesses in a murder case, in which the first accused herein was an accused. However, it ended in acquittal. Therefore, they had previous enmity, due to which the false complaint has been foisted as against the petitioner. Even assuming that the case of the prosecution is true, the first accused only set



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fire and others were standing along with the first accused. There was no specific overt act as against the other accused persons. The tea shop is not the residence of PW1 and PW2. Admittedly, they are residing somewhere and only on the date of occurrence, they stayed in the tea shop. Therefore, it is completely a false case foisted as against the petitioners.

5. Per contra, the learned Government Advocate(crl.side) appearing for the respondent / police submitted that the defacto complainant was examined as PW1, who categorically deposed that on the date of occurrence, he was threatened by the first accused that he will set fire on his tea shop. Therefore, immediately it was informed to his brother, who was examined as PW3. Only on his instruction, PW1 and his wife i.e. PW2 stayed on the date of occurrence in their tea shop. Fortunately, they escaped from fire injuries and PW4 immediately informed to the fire service. Fortunately, the fire service came there and rescued the tea shop. Therefore, the Fire Officer was examined as PW6 and he categorically deposed that on receipt of the phone call from PW4, they came to the place of occurrence and stopped fire. However, damage was assessed by the Fire Officer to the



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tune of Rs.5,000/-. Therefore, the prosecution categorically proved the case and the courts below rightly convicted the petitioners.

6. Admittedly PW1 was a witness in a murder case, in which the first accused had involved. Though it ended in acquittal, while pending trial, the present occurrence had taken place. It shows that only to threaten the PW1, he set fire on his tea shop. On 26.08.2006, PW1 was threatened by the first accused that he will set fire on his tea shop. Therefore, immediately he informed to PW3, who is his brother. As instructed by him, PW1 and PW2 stayed in their tea shop on 26.08.2006. At about 10.30 p.m., after hearing noise, PW1 and PW2 woke up and escaped from fire injuries. However, the entire tea stall was burnt and caused damage to the tune of Rs.5,000/-. PW1 evidence is very clear and it also corroborated by PW2. After shouting, general public came there for their rescue and immediately PW4 informed to fire service. Fortunately, fire service came and rescued the tea shop with small damage. However, there was damage to the tune of Rs.5,000/-. Fire Officer was examined as PW6. On the next day, PW1 lodged complaint and FIR was registered. Therefore, the prosecution proved its case beyond any doubt and the courts below rightly convicted the



petitioners.

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7. At this juncture, the learned counsel for the petitioners would submit that except the first accused, the other accused persons had no specific overt act. He further submitted that insofar as the sentence is concerned, the same may be reduced.

8. Considering the above submission, this Court is inclined to reduce sentence to the period which was already undergone by the petitioners. Accordingly, the judgment in CA.No.36 of 2008 dated 07.07.2018 on the file of the learned Additional District and Sessions Judge, (Fast Track Court) Arani, Tiruvannamalai District in respect of the petitioners/A1 to A3 is modified as follows:

- (i) The conviction imposed against the petitioners/A1 to A3 is confirmed.
- (ii) The sentence of imprisonment imposed against the petitioners/A1 to A3 is reduced to the period already undergone by the petitioners on condition that each of the petitioners shall pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only)



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as compensation, directly to PW1 by way of demand draft within a period of four weeks from the date of receipt of copy of this order and shall produce the acknowledgment receipt before the trial court. If the petitioners fail to pay the compensation, the sentence imposed by the courts below shall stand automatically restored and the respondent is directed to secure the petitioners for serving their remaining period of sentence.

- (iii) The fine imposed by the courts below is hereby confirmed.
- (iv) On payment of Rs.25,000/-(each), the petitioners are directed to be set at liberty forthwith, unless their custody are required in connection with any other case and the bail bond, if any executed by the petitioners, shall stand cancelled.

9. Accordingly, both the criminal revisions are partly allowed.

Consequently, connected miscellaneous petition is closed.

04.11.2022

Internet:Yes  
Index:Yes/No  
Speaking/Non speaking order  
lok



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**G.K.ILANTHIRAIYAN. J,**

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To

- 1.The learned Additional District and Sessions Judge,  
(Fast Track Court) Arani,  
Tiruvannamalai District
- 2.The learned Assistant Sessions Judge,  
Cheyyar, Tiruvannamalai District
- 3.Inspector of Police,  
Peranamallur Police Station,  
Tiruvannamalai District
- 4.The Public Prosecutor,  
High Court of Madras

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