



Crl.A.No.840 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 11.07.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.840 of 2019

G.Sakthivel

... Appellant

Versus

State through;
The Inspector of Police,
Krishnagiri Taluk Police Station.
(Crime No.477 of 2017)

... Respondent

Prayer: Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to admit the appeal, call for the records in S.C.No.103 of 2018 on the file of the learned Principal Sessions Judge, Krishnagiri, and allow the appeal to set aside the Judgment and order of conviction dated 04.09.2019 and acquit the appellant.

For Appellant : Mr. S. Gajapathi Krishnan

For Respondent : Mr. S. Vinoth Kumar,
Government Advocate, (Criminal side)

JUDGMENT

The first accused in S.C.No.103 of 2018 has filed this Criminal Appeal challenging the Judgment dated 04.09.2019 passed by the learned



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Principal Sessions Judge, Krishnagiri convicting him for the offense under Section 353 of I.P.C., and sentenced him to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of three months; convicting him for the offense under Section 379 of IPC, read with Section 21 (1) (iv) of the Mines and Minerals (Development and Regulation) Act, 1957 and sentencing him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for a period of six months.

2.The case of the prosecution is that on 20.07.2017 at about 8.30 a.m., in the morning within the limits of Krishnagiri Taluk, Police Station and Krishnagiri to Hosur, National Highway Road, the Sub-Inspector of Police, one Ganesan; A Head Constable, one Madhaiyan and another Head constable one Sekar have involved in vehicle checking. At that time, a Mini Lorry 1109, bearing Registration No.TN.04 – A.E. 0380, came from Salem to Bangalore. When the said inspection parties signalled to stop the vehicle, though the vehicle slowed down, suddenly the first accused, who has told the other accused A2/driver of the vehicle that they are coming to catch us,



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even as he was saying so, the driver of the vehicle took off the Lorry and speeded off. Therefore, the inspection parties informed the same to the next check post by wireless message. As per the message, in the next check post, the Lorry was seized along with two units of sand. Hence, a case in Crime No.477 of 2017 was registered against two accused, for the above said offenses.

3.During the trial, the accused denied the charges and stood trial.

The prosecution examined the Sub-Inspector of Police, *K.Ganesan*, as P.W.1; both Head Constables *Madhaiyan* and *Sekar* as P.W.2 & P.W.3; One *Purusothaman*, Police Constable as P.W.4; One, *Karthik*, the Observation Mahazar witness as P.W.5; P.W.6/*Thavamani*, is the Special Sub-Inspector of Police, who caught hold of the vehicle at the check post; P.W.7/*Vijay*, who was a witness of the Observation Mahazar; One Assistant Engineer of PWD, who valued the minerals as P.W.8; The Investigation Officer, as P.W.9.

4.On behalf of the defence, no witness was examined or documents produced. Considering the evidence on record, by the Judgment



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under appeal, the Trial Court, while acquitting both the accused for the offenses under Section 307 of the Indian Penal Code, convicted the accused for the offense under Section 353 of IPC, and Section 379 of IPC, r/w Section 21 (1)(iv) of the Mines and Minerals (Development and Regulation) Act, 1957, and imposed the sentence as aforesaid. Aggrieved by the same, the present Criminal Appeal is laid before this Court.

5.Heard *Mr. S. Gajapathi Krishnan*, learned counsel for the Appellant and *Mr. S. Vintoth Kumar*, learned Government Advocate (Criminal side) appearing for the respondent.

6.The learned counsel for the appellant would submit that even though the charge mentioned that only P.W.1 along with the two other Head Constables were conducting the vehicle check, in this case, the Investigation Officer, in his chief-examination has admitted that he was also conducting the vehicle check and therefore, the entire investigation conducted by him, cannot be taken into account and the case of the prosecution is unbelievable. He would further submit that the first accused is the appellant before this Court not even the driver of the vehicle and the



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Trial Court having disbelieved that he is abetting the second accused to move the Lorry to escape from the inspection party, therefore, he cannot be convicted for the other offenses. The learned counsel also submit that in this case, except for the Police witnesses, there are no other independent witnesses examined in this case.

7.Per contra the learned Government Advocate (Criminal side) appearing for the respondent would submit that in the chief-examination of the Investigation Officer, he has not stated that he was also with the Inspecting parties. Therefore, the said contention is incorrect. He would further submit that even though they were charged for the offense under Section 307 of IPC, the Trial Court has acquitted them for the said charge. And now, the charge against the accused is Section 353 of IPC and Section 379 of IPC, r/w Section 21 of the Mines and Minerals Act. The very fact that the accused had slowed down the vehicle, thereafter drove it in a fast manner without stopping and a wireless message was to be sent to the next check post, where P.W.6, who is the Special Inspector of Police at the check post caught the vehicle and deposed to the effect that he received the message and thereafter, they detained the vehicle, would prove that the



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offense under Section 353 of IPC, as well as Section 379 of IPC, read with Section 21(1)(iv) of the Mines and Minerals Act, have been proved by the prosecution.

8.I have considered the rival submissions made on behalf of either side and perused the material records of this case.

9.As rightly contended by the learned Government Advocate (Criminal side) in this case, the Trial Court has acquitted the accused for the offence under Section 307 of IPC. The two other charges remaining against this appellant is Section 353 of IPC and Section 379 of IPC, read with Section 21(1)(iv) of the Mines and Minerals Act. Admittedly, in this case, two units of sand worth Rs.840/- has been seized and no valid permit has been shown by the accused, therefore, the offense under Section 379 of IPC, read with Section 21(1)(iv) of the Mines and Minerals Act stands proved.

10.Further, in this case, the inspection party viz., the Sub-Inspector of Police, who examined as P.W.1, the two Head Constables



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examined as P.W.2 & P.W.3 and P.W.6, who is the Special Inspector of Police, was on duty at the check post, have clearly and categorically deposed about the facts, as to the conduct of the vehicle check and the accused not stopping their vehicle at that time and thereafter, they had intercepted and detained the vehicle only at the next check post. In that view of the matter, the offense under Section 353 of IPC, is also proved by the prosecution and therefore, no exception can be taken for the finding of guilt of the accused by the Trial Court.

11. Now coming to sentence, taking into account the accused was 40 years of age at the time of occurrence and now he will be the age of 43 years and he is the sole breadwinner of the family and since it is also represented that the accused was in prison for a period of 60 days, pending the trial, and after conviction, for another period of one month and 15 days, in all totalling to 3 months and 15 days and the fine amounts have already been paid, in this case, I am of the view that the sentence can be reduced to one as the period already undergone.



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12.In view thereof, the Criminal Appeal is partly allowed on the following terms:-

(i) The conviction of the Appellant herein for the offenses under Section 353 of IPC, and Section 379 of IPC, read with Section 21(1)(iv) of the Mines and Minerals (Development and Regulation) Act, 1957, is confirmed.

(ii) The substantive sentence of imprisonment imposed for both the offenses is reduced to the period already undergone by the appellant.

(iii) The fine amount shall remain the same.

11.07.2022

Index : Yes/No
Speaking / Non-Speaking order

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To

- 1.The Principal Sessions Judge, Krishnagiri.
- 2.The Public Prosecutor, High Court of Madras.
- 3.The Inspector of Police, Krishnagiri Taluk Police Station.



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D.BHARATHA CHAKRAVARTHY. J.,

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