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Crl.RC No.145 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **03.02.2023**

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.R.C. No.145 of 2023

K.Murugesan

... Petitioner

Vs.

State: Represented by,
Inspector of Police,
Sulur Police Station,
Coimbatore.
Crime No.757/2015

... Respondent

Criminal Revision Petition is filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the judgment passed in C.A. No.380 of 2019 on the file of the III Additional District and Sessions Judge at Coimbatore dated 21.07.2022 by confirming the judgment dated 22.10.2019 passed by the Judicial Magistrate, Sulur, Coimbatore in STC No.09 of 2017.

For Petitioner : Mr.V.Ajoy Khose

For Respondent : Mr.V.Meganathan
Government Advocate (crl.side)



ORDER

This Criminal Revision Petition has been preferred challenging the order dated 21.07.2022 passed in C.A. No.380 of 2019 on the file of the III Additional District and Sessions Judge, Coimbatore.

2. The petitioner is the sole accused against whom charges have been framed for the offences under Section 279 & 388 (2 counts) IPC. The petitioner is employed as a driver of Tamil Nadu State Transport Corporation (TNSTC). On 31.10.2015 at about 5.55 a.m., the driver by name Gandhiraj (P.W.1) who was driving a bus bearing Reg. No.TN-38-N-2040 belonging to the Tamil Nadu State Transport Corporation had stopped the bus near Sulur Defence Colony, Trichy road in order to alight the passengers in a bus stop. The bus faced towards West direction during alight of passengers. At that point of time an another bus bearing Reg. No.TN-33-N-2972 driven by the petitioner in a rash and negligent manner which came from East to West direction, ditched against the bus which was stopped at the aforesaid bus stop. In view of the said accident both the vehicles got damaged and the conductor of the bus driven by the petitioner and other passengers who have travelled in the same bus suffered severe



injuries on their legs. On the complaint given by the said Gandhiraj (P.W.1) who is the driver of other bus, a First Information Report has been registered against the petitioner in Cr. No.757/2015 and after completing investigation, charge sheet has been filed against the petitioner in S.T.C. No.09/2017 for the offences under Section 279, 338 (2 counts) IPC before the learned Judicial Magistrate, Sulur.

3. After conclusion of trial before the trial Judge, the accused was found guilty for the offences under Section 279 & 338 (2 counts) and he was imposed with a fine of Rs.500/- for the offence under Section 279 IPC, in-default to undergo one week Simple Imprisonment and to undergo Simple Imprisonment of six months and a fine of Rs.1,000/- for each count for the offence under Section 338(2counts) IPC, in-default to undergo one month Simple Imprisonment. The appeal preferred by the petitioner in C.A. No.380/2019 before the learned III Additional District & Sessions Judge, Coimbatore challenging the judgment of the trial Court was also dismissed on 21.07.2022. Now the present revision petition has been preferred challenging the judgment of the lower appellate Court.



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4. The learned counsel for the petitioner submitted that the witnesses examined have not spoken in their evidence that the accused had driven the bus in a rash and negligent manner; even the lower appellate Judge had recorded the same in the judgment; despite the same, the accused was found guilty which is not correct; the Courts below have erroneously fixed the guilt upon the petitioner and hence the revision should be allowed.

5. The learned Government Advocate (Crl.side) submitted that the bus driven by P.W.1 was not moving at the time of accident and it was stopped at the bus stop for alighting the passengers; the petitioner who had driven the bus had hit against the bus which was stopped in the bus stop; the witnesses have spoken that the bus was driven by the petitioner at high speed and that caused the accident; hence the concurrent findings of the Courts below with regard to the guilt of the accused should be upheld.

6. The manner of the accident as narrated by the witnesses was not denied. The accident was caused when the bus driven by the petitioner hit against the other bus which was stopped at the Defence colony bus stop in order to enable the passengers to alight. P.W.1 who is the driver of the other



bus have spoken about the fact that his bus was stationed at Defence colony in order to enable the passengers to alight. He had stated clearly that the bus driven by the petitioner had come from East to West direction and hit against his bus which was facing western side. Obviously when the petitioner was driving his vehicle on the said road, the heavy vehicle which was parked at the bus stop would have been visible and hence it cannot be said that the vehicle was out of sight.

7. The other witness who was examined as P.W.2 is an injured witness who travelled in the bus driven by the petitioner himself. She had stated in his evidence that she was travelling in the bus which was driven by the petitioner and he had driven the bus in a very high speed and hit against the standing bus. Even though P.W.2 who is the passenger of the petitioner's bus did not employ the technical words like 'Rash and Negligence', her categorical evidence is that the petitioner had driven the bus in a very high speed which caused the accident.

8. The solid fact came to light from the evidence of prosecution and from the documents submitted before the Court is that the bus driven by



P.W.1 was not moving at the time of accident. It is the petitioner who had hit his bus against the standing bus and for which the petitioner alone owes an explanation.

9. The learned counsel for the petitioner submitted that the conductor of the bus who was also injured in the accident was not added as a witness and that is fatal to the prosecution. The conductor was a colleague of the petitioner who was travelling in the same bus at the time of the accident. Even though the conductor of the bus was injured, there cannot be any assurance that he would depose in favour of the prosecution in view of his association with the driver of the same bus in which he acted as conductor during the relevant point of time.

10. The damage caused to the vehicle as it appears from the evidence of Motor Vehicle Inspector would also show that the petitioner's vehicle got heavily damaged on its front side. The evidence of Motor Vehicle Inspector would make it clear that there was no mechanical failure in the bus driven by the petitioner. In such background of the facts, the learned trial Judge had rightly appreciated the evidence and arrived at a correct conclusion that



the accident had occurred due to the sheer negligence on the part of the petitioner. The learned appellate Judge had also properly re-appreciated the evidence and the finding of the trial Judge and recorded the reasons as to why the judgment of the trial Court needs no interference.

11. The learned Government Advocate submitted that due to accident, D.W.2 had suffered grievous injury and in fact one of her legs got amputated. The impact of the accident had caused serious consequence upon the life of the injured victims. Had the petitioner slowed down the speed while coming near the bus stop and that too after seeing a bus standing there, the accident could have been averted. Since the negligence on the part of the petitioner is writ large, I do not find any reason to interfere with the findings of the Courts below.

12. The learned counsel for the petitioner submitted that the petitioner had been in service for nearly 20 years and he had not involved in accident any time before and considering his long service and the unfortunate accident that had occurred on one single day, some indulgence should be shown in the matter of punishment.



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13. The petitioner has been employed as a corporation driver and said to have completed twenty years of service. There is no record produced to show that the petitioner was in a habit of committing such accident during his service. Since the petitioner had caused such an accident for the first time and obviously without any intention, I feel some indulgence shall be shown in the matter of punishment.

14. As a result, this Criminal Revision Petition is partly allowed and the judgment dated 21.07.2022 passed in C.A. No.380 of 2019 by the learned III Additional District and Sessions Judge, Coimbatore is modified to the extent that the punishment imposed for the offence under Section 279 IPC stands unaltered and as far as the punishment under Section 388 IPC (2 counts) is concerned, the fine amount of Rs.500/- is enhanced to Rs.1,00,000/- without any imprisonment. The said fine amount shall be paid as compensation to the injured witness P.W.2.

03.02.2023

Index : Yes/No
Speaking Order : Yes / No
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To:

1. The III Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate,
Sulur, Coimbatore.
3. The Inspector of Police,
Sulur Police Station,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

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