



Crl.R.C(MD)No.74 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.74 of 2018

Alagar @ Valartha Alagar

... Petitioner/
Appellant/Accused No.1

Vs.

The Sub Inspector of Police,
Thevaram Police Station,
In Crime No.8 of 2005,
Theni District.

... Respondent/
Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397(1) r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the conviction and sentence passed by the learned Additional District and Sessions Judge, Theni in C.A.No.58 of 2017, dated 15.09.2017 in C.C.No.328 of 2005 on the file of the learned District Munsif cum Judicial Magistrate, Bodinaickanoor, dated 04.11.2009 and allow this revision and acquit the revision petitioner from the charge levelled against him.

For Petitioner : Mr.K.Samidurai
for Mr.P.Vijay Raghavan

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)



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ORDER

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This revision has been filed to set aside the Judgment made in C.A.No.58 of 2017, dated 15.09.2017, on the file of the learned Additional District and Sessions Judge, Theni, confirming the conviction and sentence made in C.C.No.328 of 2005, dated 04.11.2009, on the file of the learned District Munsif cum Judicial Magistrate, Bodinaickanoor.

2.The case of the prosecution is that the first accused and deceased accused persons were involved in the murder case of Ex.Minister Aladi Aruna. In order to escape from the police personnel in the said case, the first accused went to his father-in-law's place, namely Alagarnayakkanpatti. A few days before 10.01.2005, the accused persons 2 to 4 with an intention to escape from the murder case even after knowing the fact that the first accused and the deceased accused persons were very much required in the said case, without informing the same to the concerned police officials, they helped to hide in a remote place. The first accused and the deceased accused possessed two 0.303 inches of gelatin, 8 mm gelatin, statue of Meenakshi, camera, cell phone and watch without any licence and suspected to be the stolen



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goods. When the complainant and the Sub-Inspector of Police on 10.01.2005 at about 05.30 p.m., proceeded to surveillance the suspected persons, the first accused and two other deceased accused persons were standing in a suspicious manner, after seeing the police personnel they flew away from the scene of the crime and lifted the above said things. After the seizure of 20 items lodged a complaint and the respondent registered the F.I.R in Crime No.8 of 2005 for the offence under Section 3 r/w 25(1)(b)(a) of the Arms Act, 1959 and Section 65 of M.C.P Act r/w 202 and 212 of I.P.C. After completion of the investigation, the respondent filed a final report and the same has been taken cognizance by the trial Court.

3.On the side of the prosecution, they had examined P.W.1 to P.W.12 and marked Ex.P.1 to Ex.P.7 and on the side of the accused, no one was examined and no documents were marked and the Court documents were marked as Ex.X.1 and Ex.X.2.

4.On perusal of the oral and documentary evidence, the trial Court found the first accused guilty for the offence under Section 3 r/w 25(1)(b) of the Arms Act and sentenced him to undergo three years Rigorous Imprisonment. Aggrieved by the



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same, the petitioner preferred an appeal in C.A.No.58 of 2017 on the file of the learned Additional District and Sessions Judge, Theni and the Appellate Court dismissed the appeal confirming the conviction and sentence imposed by the trial Court. Hence, the present revision.

5.The learned counsel appearing for the petitioner would submit that the prosecution failed to obtain previous sanction as contemplated under Section 39 of the Arms Act before the initiation of prosecution as against the petitioner. According to the prosecution, after recovery of the alleged materials, recorded the confession from the petitioner. Thereafter, he was produced under P.T. warrant in the present case. However, no independent witnesses were examined by the prosecution. Except P.W.1, no one supported the case of the prosecution.

6.Per contra, the learned Government Advocate (Criminal Side) would submit that the petitioner and other accused were charged for the offence under Section 3 r/w 25(1)(b)(a) of the Arms Act, 1959 and Section 65 of M.C.P Act r/w 202 and 212 of I.P.C., and the petitioner found guilty for the offence under Section



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3 r/w 25(1)(b) of the Arms Act and sentenced him to undergo three years Rigorous Imprisonment. In order to prove the charges, the prosecution had examined P.W.1 to P.W.12, in which, P.W.1 and P.W.2 categorically deposed and proved the charges. Therefore, both the Courts below rightly convicted the petitioner. That apart, already the petitioner had undergone the entire sentence and as such, the revision become infructuous. Initially, a case was registered as against the petitioner in Crime No.847 of 2004, and he was convicted for the offence under Section 302 of I.P.C r/w 120(b), 307 r/w 34 of I.P.C and sentenced to undergo death in S.C.No.62 of 2006 on the file of the learned Principal Sessions Judge, Tirunelveli, by Judgment dated 16.04.2008 and on appeal in C.A.No.209 of 2008, the sentence was altered to undergo life imprisonment by Judgment, dated 05.08.2009. Thereafter, in the present case, the petitioner was convicted by Judgment, dated 04.11.2009. In fact, the earlier conviction was confirmed by this Court and modified the sentence alone to undergo life imprisonment. From the date of Judgment, dated 05.08.2009, the petitioner is incarcerated in imprisonment. The period of three years of sentence was already completed in the present case.

7.Heard the learned counsel appearing on either side and perused the materials available on record.



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8.The only main ground raised in this revision is that the prosecution failed to obtain previous sanction as contemplated under Section 39 of the Arms Act. The petitioner was charged with the offence under Section 3 r/w 25(1)(b)(a) of the Arms Act. On perusal of the records, the prosecution failed to obtain any sanction as contemplated under Section 39 of the Arms Act. It is relevant to extract the provision under Section 3(1) of the Arms Act, 1959, which reads as follows:-

"3. Licence for acquisition and possession of fire-arms sod ammunition-

'[(I)] No person shall acquire, have in his possession, or carry any fire-arm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:

Provided that a person may, without himself holding a licence, carry any fire-arm or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder."

9.If the prosecution framed charges for the offence under Section 3 of the Arms Act, as per Section, it requires sanction



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under Section 39 of the Arms Act. If the person is found to be in possession of firearm without any valid licence, he can be charged for the offence under Section 3 r/w 25(1)(b)(a) of the Arms Act. It is relevant to extract the provision under Section 39 of the Arms Act, 1959, which reads as follows:-

"39.Previous sanction of the District Magistrate necessary in certain cases.-

No prosecution shall be instituted against any person in respect of any offence under Section 3 without the previous sanction of the District Magistrate."

10.Thus, it is clear that no prosecution shall be instituted for the charge under Section 3 of the Arms Act, 1959, without previous sanction. In the case on hand, the prosecution failed to accord any sanction from the Magistrate concerned as required under Section 39 of the Arms Act. Further, both the mahazar witnesses examined as P.W.3 and P.W.4 were turned hostile. Therefore, the prosecution failed to prove the seizure of the arms. The local person was examined as P.W.2. He also deposed that he heard the news, and he never witnessed anything. Therefore, except P.W.1, no witness had spoken about the alleged



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seizure of arms. Admittedly, after the seizure of the alleged arms, the confession statement was recorded from the petitioner who was already in prison connected to another case. In fact, he was produced only on P.T warrant in the present case. Therefore, the prosecution failed to prove its case beyond any doubt and the benefit of the doubt goes in favour of the petitioner. Though the petitioner had already undergone imprisonment in this case, since already he was convicted in the earlier case and incarcerated in imprisonment, the conviction and sentence imposed in the present case cannot be sustained and the same is liable to be set aside.

11. Accordingly, the Criminal Revision Case is allowed and the Judgment made in C.A.No.58 of 2017, dated 15.09.2017, on the file of the learned Additional District and Sessions Judge, Theni, confirming the conviction and sentence made in C.C.No.328 of 2005, dated 04.11.2009, on the file of the learned District Munsif cum Judicial Magistrate, Bodinaickanoor, are set aside. The petitioner/first accused is acquitted.

21.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes



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To

- 1.The Additional District and Sessions Court,
Theni District.
- 2.The Munsif cum Judicial Magistrate,
Bodinaickanoor.
- 3.The Sub Inspector of Police,
Thevaram Police Station,
Theni District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

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Order made in
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