



Crl.R.C.(MD)No.666 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 26.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.666 of 2018
and
Crl.M.P.(MD)No.10794 of 2018

Pakirathan

... Petitioner

VS.

State of Tamil Nadu,
Rep. by the Inspector of Police,
Pappakudi Police Station,
Tirunelveli District.

... Respondent

PRAYER : This Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the judgment passed by the learned Additional District Sessions Court, Tenkasi dated 02.11.2018 in Crl.A.No.37 of 2016 by modifying the order of conviction and sentence passed by the learned District Munsif Cum Judicial Magistrate, Cheranmahadevi in C.C.No.298 of 2008 dated 07.04.2016 and set aside the same as illegal and acquit the petitioner by allowing this Criminal Revision Petition.

For Petitioner : Mr.M.Prabu
For Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate(Crl.Side)



ORDER

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This revision has been filed to call for the records pertaining to the judgment passed by the learned Additional District Sessions Court, Tenkasi, dated 02.11.2018 in Crl.A.No.37 of 2016 by modifying the order of conviction and sentence passed by the learned District Munsif Cum Judicial Magistrate, Cheranmahadevi in C.C.No.298 of 2008 dated 07.04.2016 and set aside the same as illegal and acquit the petitioner by allowing this Criminal Revision Petition.

2. The case of the prosecution is that on 10.09.2008 at about 05.00 p.m., near by Sivan Kovil, the petitioner/accused drove the Deepa Matriculation School Bus bearing No.72 M 8436 and dropped the deceased and further without seeing the deceased, the petitioner started the vehicle and dashed against the deceased. Thereby, the deceased sustained injuries and he died. Hence, the complaint was registered against the petitioner in Crime No.90 of 2008 for the offence punishable under Section 304(A) of IPC.

3. After taking cognizance by the trial Court, on the side of the prosecution, 11 witnesses have been examined as P.W.1 to P.W.11 and seven documents were examined as Ex.P.1 to Ex.P.7 and on the side of



the accused, no one was examined as witnesses and no documents were marked.

4. On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty and convicted him for the offence under Section 304(A) of IPC and sentenced him to undergo one year simple imprisonment in C.C.No.298 of 2008 on the file of the District Munsif Cum Judicial Magistrate, Cheranmahadevi. Aggrieved by the same, the petitioner has preferred an appeal in Crl.A.No.37 of 2016 before learned Additional District Sessions Court, Tenkasi, and the same was partly allowed on 02.11.2018 by modifying the sentence by directing him to serve three months rigorous imprisonment instead of one year rigorous imprisonment. Against which, the present revision has been filed.

5. The learned counsel for the petitioner submitted that non of the witnesses has spoken about that petitioner has droved the vehicle in a rash and negligent manner. He further submitted that the deceased is the pre K.G student and after getting down from the school van. The parents of the deceased ought to have take the child to home. However, after getting down from school van, the decased boy without any caution and without even seeing the school van, the deceased crossed the road and



the van dashed against the deceased. The deceased sustained grievous injuries and died. He further submitted that the accident ought not to have occurred due to the rash and negligent driving of the petitioner herein and the accident was occurred only by the deceased boy, since the boy without noticing the van, he crossed the road. Hence, he prayed for acquittal from the charge under Section 305(A) of IPC.

6. The Learned Government Advocate (Crl.Side) appearing for the respondent police submitted that in order to prove the prosecution, several witnesses were examined and the vehicle's report is marked as Ex.P7. Without seeing the child while he was crossing the road, after getting down from the school van to reach his home, the driver of the vehicle drove the vehicle in a rash and negligent manner and dashed against the deceased and he sustained serious injuries and died. He further submitted that both the Courts below held that because of the carelessness of the petitioner only, the accident was occurred.

7. Heard both sides and perused the materials available on record.

8. On 10.09.2008 at about 05.00 p.m., near by Sivan Kovil, the petitioner drove the Deepa Matriculation School Bus bearing No.72 M



8436 and dropped the deceased in front of his house and the deceased crossed the road in front of the van without noticing that the van was proceed forwarded. The child was not visible to the petitioner, while he start the vehicle to drop the other children. Admittedly, the residence of the deceased is situated in the opposite side of the road. Therefore, the deceased after getting down from the van, he ought to have crossed the road to reach his house. Absoulty, the petitioner is also without noticing the child he suddenly started the van and proced forwarded. The accident was not occurred only due to the rash and negligent driving of the petitioner and also negligence on the part of the deceased child. Normally after getting down from the school van, the parents are will take care of their child, since the child was aged about 4 ½ years at the time of the accident.

9. Considering the said submission, the conviction imposed by the both Courts below is confirmed. Insofar as the sentence is concerned, it is modified to effect that the petitioner shall pay compensation of Rs. 50,000/- (Rupees Fifty Thousand Only) before the District Munsif Cum Judicial Magistrate, Cheranmahadevi, in C.C.No.298 of 2008, on or before **28.07.2023**.



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10. If the petitioner failed to deposit the compensation amount, the sentence imposed by the learned Additional District and Sessions Judge, Tenkasi, will be restored automatically and the respondent is at liberty to secure the petitioner to serve the remaining period of sentence.

Accordingly, the Criminal Revision Case is partly allowed. Consequently, connected miscellaneous petition is closed.

26.06.2023

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

1. The Additional District Sessions Court, Tenkasi.
2. The District Munsif Cum Judicial Magistrate, Cheranmahadevi.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

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