



Crl.R.C(MD)No.868 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.868 of 2017

R.Mariappan

...Petitioner

Vs.

**State through
The Inspector of Police,
Karur Town Police Station,
Karur.
(Crime.No.89 of 2009)**

...Respondent

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for records relating to the impugned judgment, dated 07.06.2017 in C.C.No.89 of 2009 on the file of the Judicial Magistrate No.1, Karur, confirmed by the Principal Sessions Judge, Karur in C.A.No.76 of 2017, dated 31.10.2017 and set aside the same and consequently to acquit the petitioner herein for the offence under Sections 279, 337 and 338 of IPC.

For Petitioner : Mr.T.Antony Arul Raj

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



Crl.R.C(MD)No.868 of 2017

ORDER

WEB COPY

This Petition has been filed to set aside the order, dated 31.10.2017 in C.A.No.76 of 2017 on the file of the learned Principal Sessions Judge, Karur, confirming the order dated 07.06.2017 in C.C.No.89 of 2009 on the file of the learned Judicial Magistrate No.1, Karur.

2.The case of the prosecution is that the petitioner drove the bus belonging to the State Transport Corporation from Salem to Madurai bypass road near Thirukampuliyur Village in a rash and negligent manner and rammed into a lorry, which was parked on the road due to flat tire, thereby, caused injuries to the passengers. Hence, the respondent registered an FIR in Crime No.2201 of 2007 for the offences under Sections 279, 337 and 338 of IPC. After completion of investigation, the respondent police filed a final report and the same has been taken cognizance for the offence under Sections 279, 337 (5 counts) and 338 (3 counts) of IPC. In order to prove the charge, the prosecution had examined PW1 to PW14 and marked fourteen documents as Ex.P1 to Ex.P14. On perusal of oral and documentary evidence, the trial Court convicted the petitioner for the offences under



Crl.R.C(MD)No.868 of 2017

Sections 279, 337 and 338 of IPC and sentenced him to undergo simple imprisonment for a period of three months for the offence under Section 279 of IPC and to undergo simple imprisonment for a period of three months for the offence under Section 337 (5 counts) of IPC and to undergo simple imprisonment for a period of six months for the offence under Section 338 (3 counts) of IPC. Aggrieved by the same, the petitioner has preferred an appeal and the same was also dismissed and the conviction of the accused for the offence under Section 279, 337 (5 counts) and 338 (2 counts) of IPC was confirmed. The sentence of imprisonment for a period of three months imposed on the accused for the offence under Section 279 of IPC is alone set aside. Hence, the present revision.

3. The learned counsel for the petitioner would submit that the petitioner has 32 years and unblemished record of his driving in the State Transport Corporation. Unfortunately, due to that accident, he suffered mental agony. He is in-service even till today. If he convicted for facing the offence, he will loss the entire retirement benefit.



Crl.R.C(MD)No.868 of 2017

4. Even according to the case of the prosecution, the lorry which was parked in the middle of the road without any signal and safety measures. Though he drove the bus in a very slow speed, he dashed against the lorry, which is parked middle of the road. Therefore, some of the passengers sustained simple injury and grievous injury. He further submitted that in fact, the prosecution also failed to examine the lorry driver or cleaner, in order to prove that the said lorry was parked in the middle of the road due to flat tire. The Courts below mainly relied upon the deposition of PW3 to PW7 and convicted the petitioner. He further submitted that PW6 deposed that the accident was happened only due to the petitioner fell as sleep, whereas, his statement recorded under Section 161 of Cr.P.C. does not reveal the same. He deposed improvement method and as such his evidence cannot be taken into account for convicting the petitioner. At any cost, the Corporation bus cannot be driven speedily. The maximum speed limit is only 60 kilometer and as such, the accident was not happened rash and negligent driving of the petitioner.

5.Per contra, the learned Government Advocate (Crl.side) categorically deposed that only because of the rash and negligent driving



Crl.R.C(MD)No.868 of 2017

of the petitioner, the accident was happened with the lorry, which was parked in the left hand side of the road and the petitioner has not noticed the lorry, which was break down, and rammed against the lorry. Due to which, several persons sustained injuries including the petitioner herein. Therefore, the Courts below rightly convicted and sentenced him to undergo three months simple imprisonment and as such does not require any interference by this Court.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.side) appearing for the respondent.

7. On 14.12.2007 at about 5.15 p.m., when the petitioner was driving a bus belonging to the State Transport Corporation from Salem to Madurai bypass road near Thirukapuliur Village, he rammed into the lorry, which was parked on the road with flat tire, therefore, caused injuries to the passengers, who travelled in the bus. Admittedly, the lorry, which was parked on the road without any signal and safety measures to be followed. Normally, when the vehicle break down in the middle of the road, there are safety measures in order to avoid further



Crl.R.C(MD)No.868 of 2017

accident. Normally, the vehicles are plying in a speedy manner therefore, wherever the vehicle got repair and breakdown for any reason, the driver of the said vehicle has to indicate to others that the said vehicle is break down. So that further accident can be avoided. In the case on hand, admittedly, the said lorry was break down and stayed in the middle of the road and parked in the middle of the road and there is absolutely no material to show that the lorry was parked in the road with signal or any other safety measures in order to avoid the accident. On the same direction, the petitioner has driven his bus with passengers. Unfortunately, the bus hit the lorry, which was parked in the middle of the road. Normally, when the lorry was parked or going middle of the road, the vehicle which followed the said vehicle may not have clear visible, where the said vehicle parked or going. Unfortunately, the petitioner, without noticing the lorry, which was parked in the middle of the road, dashed against the lorry. Due to which, some of the passengers has been injured. That apart, PW6 and PW9 deposed that when the petitioner fell as sleep without noticing the lorry parked in the road dashed against the lorry, whereas on perusal of statement recorded under Section 161 of Cr.P.C. revealed that both the witnesses never whispered about the same. In fact, the petitioner also sustained injuries due to the



Crl.R.C(MD)No.868 of 2017

WEB COPY said accident. Further, the prosecution also failed to examine the driver of the lorry, which was parked in the middle of the road, in order to prove that the said lorry was parked in the left hand side of the road or which was parked middle of the road due to any mechanical defect or flat tire. Therefore, the prosecution failed to prove the case beyond any doubt. However, the Courts below mechanically convicted the petitioner for the offences under Sections 337 and 338 of IPC., and as such it is liable to be interfered with. Therefore, this Court finds infirmity and illegality in the order passed by the Courts below.

8. Accordingly, the Criminal Revision Case stands allowed and the order made in C.A.No.76 of 2017, dated 31.10.2017 on the file of the learned Principal Sessions Judge, Karur, confirming the order dated 7.6.17 in C.C.No.89/09 on the file of the learned Judicial Magistrate No. 1, Karur are hereby set-aside.

17.03.2023

NCC : Yes/No
Index : Yes / No
vsd



WEB COPY



Crl.R.C(MD)No.868 of 2017

G.K.ILANTHIRAIYAN, J.

vsd

To

- 1.The Principal Sessions Judge,
Karur.
- 2.The Judicial Magistrate No.1,
Karur.
- 3.The Inspector of Police,
Karur Town Police Station,
Karur.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.R.C(MD)No.868 of 2017

17.03.2023



WEB COPY



Crl.R.C(MD)No.868 of 2017