



Crl. R.C. No. 1230 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on	01.11.2023
Judgment Pronounced on	13.06.2024

Coram :

The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

Criminal Revision Case No.1230 of 2019

1.Raju
2.Ayyanar
3.Ganapathi
4.Palanivel
5.Settu @ Sundaram
6.Palanivel

... Petitioners/Accused Nos.1 to 6

Versus

State rep by
The Inspector of Police,
Chidambaram Police Station,
Chidambaram,
Crime No.682 of 2012

... Respondent/Complainant

Criminal Revision filed under Section 397 & 401 of Cr.P.C against the judgment and conviction dated 26.07.2019 in C.A. No.35 of 2019 passed by the learned II Additional District and Sessions Judge, Chidambaram confirming the sentence passed in C.C.No.275 of 2012 by the learned Judicial Magistrate No.II, Chidambaram dated 07.01.2019 and to set aside the same.

For Petitioners 1 to 4 .. Mr. P.G.Perumal Pandian,
Legal Aid Counsel

For Petitioners 5 and 6 .. Mr. S.V.D.Rajendra Prasad

For Respondent .. Mr. S.Vinoth Kumar
Government Advocate (Crl. Side)

JUDGMENT



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This Criminal Revision Case had been filed against the judgment and conviction dated 26.07.2019 in C.A. No.35 of 2019 passed by the learned II Additional District and Sessions Judge, Chidambaram confirming the sentence passed in C.C.No.275 of 2012 by the learned Judicial Magistrate No.II, Chidambaram dated 07.01.2019 and to set aside the same.

2. The brief facts, which are necessary for the disposal of this Criminal Revision Case, are as follows:-

2.1. On 26.09.2012 by around 6.30 a.m. In Chidambaram Town near Ambedkar Nagar, the List Witness – 1/Purushothaman, List Witness – 2/Damodharan and List Witness – 3/Sivaperumal had gone to the place of residence of the Accused herein with regard to enquiry in Crime No.679 of 2012 for the offence under Sections 294(b), 323, 324 and 506(ii) of IPC. At that time, the Accused No.2 to Accused No.6 prevented the Police officials from arresting the first Accused thereby they have prevented the Government officials from discharging their duty. Accused 2 to 6 had challenged the Police officials that they cannot arrest any one from their neighbourhood. If they attempt to arrest, they will be killed. Therefore, the Police returned to the Police Station and registered a case in Crime No.682 of 2012 against the first Accused for the offence under Sections 147, 341,



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353, 224 and 506(ii) of IPC and against the Accused No.2 to Accused No.6 for the offence under Sections 147, 341, 353, 225 and 506(ii) of IPC. On completion of the investigation, the final report was laid before the learned Judicial Magistrate No.II, Chidambaram. The learned Judicial Magistrate No.II, Chidambaram had taken cognizance of the offences and numbered investigation report as C.C.No.275 of 2012. Summons were served on the Accused and on appearance of Accused copies were furnished under Section 207 of Cr.P.C. After hearing the learned Assistant Public Prosecutor and the learned Defence Counsel the charges were framed by the learned Judicial Magistrate No.II, Chidambaram under Sections 147, 341, 353, 224, 225 and 506(ii) of IPC. The Accused denied the charges. Therefore, the learned Judicial Magistrate No.II, Chidambaram had ordered trial. During trial, on the side of Prosecution seven witnesses had been examined as P.W-1 to P.W-7 and documents were marked as Ex.P-1 to Ex.P-6 and on the defence side two witness had been examined as D.W-1 and D.W-2 and no documents were marked.

2.2. On consideration of the rival submissions, the learned Judicial Magistrate No.II, Chidambaram, and on appreciation of evidence by judgment dated 07.01.2019 convicted the first Accused for the offence under Sections 147, 353 and 224 of IPC and convicted the Accused Nos.2 to 6 for



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the offence under Sections 147, 353 and 225 of IPC. Aggrieved by the judgment of conviction and sentence of imprisonment, the Accused preferred appeal in C.A.No.35 of 2019 on the file of the learned II Additional District and Sessions Judge, Chidambaram.

2.3. After hearing the appeal, the learned II Additional District and Sessions Judge, Chidambaram, by judgment dated 26.07.2019 had dismissed the appeal and confirmed the judgment of conviction and sentence imposed on the Accused.

2.4. Aggrieved by the dismissal of the appeal, the Accused Nos.1 to 6 had filed this Criminal Revision Case.

3. It is the submission of the learned Counsel for the Revision Petitioner that the Complainant Police had not issued summons to the Accused-1 against whom the Complainant party, the Police party, was alleged to have gone to arrest him without any warrant. The Police Officers of Chidambaram Town Police Station had not issued summons as per the Code of Criminal Procedure or informed the near and dear ones of the Accused-1 about the grounds of arrest. Without following due procedures established by law, the Law Enforcement Officers had attempted to arrest



the Accused-1. Therefore, Accused-1 was within his right to evade arrest, since he was taken by surprise, therefore, he resisted the arrest. For resisting the arrest, the Special Sub-Inspector of Police, Chidambaram Town Police Station had given a complaint as though the Law Enforcement Officers were prevented by the Accused-1 along with Accused-2 to Accused-11 thereby preventing a Government servant from discharging his lawful duty. Had the Special Sub Inspector of Police, followed the ratio laid down by the Hon'ble Supreme Court in the case of ***D.K.Basu -vs- State of West Bengal [1997 (1) SCC 416]*** or the reported decision of the Hon'ble Supreme Court in the case of ***Arnesh Kumar -vs- State of Bihar [2014 (8) SCC 273]***, the case would not have been registered. The entire case of the Prosecution is a foisted case as though the Accused-1 to Accused-11 were alleged to have resisted the arrest of the Accused-1 by the Police. Also as per the reported ruling of the Hon'ble Supreme Court in the case of ***Lalitha Kumari -vs- State Government of Uttar Pradesh [(2014) 2 SCC 1]***, the Police ought to have issued summons to the witnesses or the Accused before proceeding with any enquiry. In this case, they had not followed any of the guidelines issued by the Hon'ble Supreme Court. Therefore, registering the case as though the Accused resisted and prevented the Law Enforcement Officers from their lawful duty is nothing but a foisted case. The learned Judicial Magistrate-II, Chidambaram and the learned Sessions Judge as Appellate Judge failed to



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consider those reported rulings regarding arrest of the citizen by the Police,
the procedure to be adopted by the Police.

4. The learned Counsel for the Revision Petitioners/learned Counsel nominated by the Legal Aid Committee attached to the High Court had also invited the attention of this Court to the admission made by the Complainant, Special Sub-Inspector of Police in his cross examination regarding suggestions put to the Special Sub-Inspector of Police by the learned Counsel for the Accused. From the admissions made by the Special Sub-Inspector of Police/De-facto Complainant, it is to be presumed that they had not followed due procedures as per the reported decision of the Hon'ble Supreme Court. Therefore, the learned Counsel for the Revision Petitioners relied on the earlier reported decisions of this Hon'ble High Court on this point.

5. In support of his contention, the learned Counsel for the Revision Petitioners relied on the following reported decisions:-

(i) In re ***Appaswamy Mudali*** [1924 SCC Online Mad 38] wherein it is held as under:

“Where a constable goes and arrests a man and tells him that he is arresting him under Section 54 Criminal Procedure Code and the arrest under that section is afterwards admitted to be unlawful, and the accused resists arrest, on the ground that he is not liable to be arrested under that section, he cannot be convicted and



punished under Section 225 Penal Code, 1860, even though the arrest may be lawful under some other provision of law."

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(ii) ***Kochu Kunju Kunju -vs- State of Kerala*** reported in **1962 (2)**

Cri LJ 437 (the case was argued by the former and retired Supreme Court Judge V.R.Krishna Iyer, before his elevation as Hon'ble Judge).

(iii) ***Pedda Muni Reddi and another -vs- Emperor*** reported in **1948**

MWN 356 ;

(iv) ***Yedama Subbaramiah -vs- Emperor*** reported in **1934 MWN 72**,

wherein it is held as,

"The pleader for the accused argued at great length that deputy nazirs are not empowered to sign the arrest warrants and in support of his argument he showed Page 1941 of the C.P.C by V.V.Chitale and K.N.Annaji Rao Wherein it is stated as follows under O.21, R.24

"a process issued under this rule which is not signed by the judge is illegal. if however any officer of the court is specially authorised in this behalf, it is enough if it is signed by him. such authority should be in writing and kept in the court. If however such process is signed by a sheristadar "by order" the presumption will be that he was authorised in this behalf and the onus of showing that he had no such authority will be on the party who denies the authority". The pleader further argued that the deputy nazir admitted that the present district munsif did not authorise him to sign the warrant in writing and as such the arrest warrant issued and signed by the deputy nazir in this case is illegal".

The conviction of the petitioner for offences punishable under Section 225-B and 353, I.P.C and the sentences therefore must be set aside. The warrant of arrest, the execution of which was resisted by the petitioner is clearly an illegal one. The warrant of arrest was signed by the deputy nazir, an officer who had not been empowered legally or given any lawful authority to sign such warrants, and the fact that it had been the practice for a considerable time for such warrants to be signed by the deputy nazir cannot make the signing



of them by that officer legal, in the absence of due authorisation. the petitioner who has been admitted to bail is acquitted and set at liberty and his bail bond will be discharged.”

6. The learned Government Advocate (Crl.side) vehemently objected to the line of arguments of the learned Counsel for the Revision Petitioners stating that this Revision has no merits. The Accused-1 is alleged to have attacked the Complainant. In the earlier case, the petty shop keeper was returning home after day's work was threatened by Accused-1 (since deceased) that he has to part his day's earnings to him to enable him to buy alcohol drinks. When the Complainant in the earlier case, refused to part with the amount, he was attacked with sharp edged weapon on his head resulting in head injuries and was admitted in Hospital for observation and treatment. Based on such complaint, the earlier case was filed against Accused-1. In connection with that case, when the Special Sub-Inspector of Police, Chidambaram Town Police Station went along with two Head Constables to arrest Accused-1 in this case, Accused-2 to Accused-6 had joined together, assembled and attacked the Police party and thereby committed offence under Section 225 and 224 of I.P.C. This fact had been deposed clearly by the Police parties/De-facto Complainant who accompanied the Police Constables to secure the Accused-1. Therefore, the decisions cited by the learned Counsel for the Revision Petitioners will not



hold good. In those cases, arrest by Police party, P.W-1 to P.W-3 was justified. The same was discussed by the learned Judicial Magistrate-II, Chidambaram and had convicted the Accused.

7. On perusal of the evidence during Appeal, the learned II Additional District and Sessions Judge, Chidambaram had confirmed the judgment of conviction recorded by the learned Judicial Magistrate-II, Chidambaram. When two Courts had given concurrent finding against the Accused, this Court sitting in revision cannot re-appraise the evidence and shall not set aside the conviction recorded by the learned Judicial Magistrate-II, Chidambaram. This Criminal Revision lacks merit and is to be dismissed.

Point for consideration

Whether the Revision is to be allowed and the judgment of conviction recorded by the learned Judicial Magistrate-II, Chidambaram in C.C.No.275 of 2012, dated 07.01.2019 and in appeal by the learned II Additional Sessions Judge, Chidambaram dismissing the Appeal are to be set aside as perverse?

8. Considering the rival submissions made by the learned Counsel for the Revision Petitioners, the learned Counsel nominated by the Legal Aid



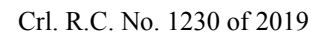
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Committee attached to this Court, Thiru.P.G.Perumal Pandian and the learned Government Advocate (Crl.Side) Mr.Vinoth Kumar and perused the judgment of the learned Judicial Magistrate-II, Chidambaram in C.C.No.275 of 2012 and the learned II Additional District and Sessions Judge in C.A.No.35 of 2019, the guidelines issued by the Hon'ble Supreme Court in the case of *Arnesh Kumar -vs- State of Bihar* was delivered in the year 2014 and the occurrence in this case was of the year 2011. In the case of *Lalitha Kumari -vs- State of Uttar Pradesh*, the judgment of Hon'ble Supreme Court was pronounced in the year 2013 and the occurrence in this case was of the year 2011.

9. The charge sheet filed by the Sub Inspector of Police, Chidambaram Town Police Station was taken on file by the learned Judicial Magistrate-II, Chidambaram, in C.C.No.275 of 2012 and the judgment of the learned Judicial Magistrate was pronounced on 07.01.2019.

10. The decision cited by the learned Counsel for the Revision Petitioners that the Special Sub Inspector of Police, de-facto Complainant had not followed the ratio laid down by the Hon'ble Supreme Court in issuing summons to the Accused is not applicable to the facts of this case.

<https://www.mhc.tn.gov.in/judis> 11. The reported decision of the Hon'ble Supreme Court in *D.K.Basu*



12. The submission of the learned Counsel for the Revision Petitioners that if the Special Sub-Inspector of Police, the de-facto Complainant in this case had issued summons to the Accused for inquiry, the occurrence would not have taken place, cannot be accepted in the facts and circumstances of the case. As per the complaint, under Ex.P-1 and the F.I.R under Ex.P-4, when the Special Sub-Inspector of Police, P.W-1 in this case along with P.W-2 and P.W-3 went to the place of residence of the Accused-1 Raju (since deceased) to arrest him, the Accused-2 to Accused-6, who claimed to be the relatives of the Accused-1, protested and retaliated and forcibly took away Accused-1 from the custody of P.W-1 to P.W-3.

Therefore, the ingredients of offences under Sections 224 and 225 of I.P.C



were attracted. Only after arrest, the procedure to be adopted by the reported decisions of the Hon'ble Supreme Court in the case of ***D K Basu -vs State of West Bengal*** would arise. When P.W-1 to P.W-3 attempted to arrest the Accused-1 who was involved in a crime related to causing grievous injury on the Complainant in an earlier case in Crime No.679 of 2012 for offences under Section 294b, 323, 324 and 506(ii) of I.P.C, Accused-1 was the only Accused in the earlier case, he was alleged to have caused grievous injury on the head of the De-facto Complainant for his attempt in extortion of money forcibly from the De-facto Complainant, Manikandan on the alleged date of occurrence, for purchasing intoxicating drinks which was refused by the De-facto Complainant in the earlier case, as he did not have any money with him.

13. As per the contents of the F.I.R in Crime No.679 of 2012 dated 25.09.2012, the De-facto Complainant Manikandan who was a worker in a shop in Cuddalore who had alighted from bus at Malliga Hospital Bus stop in Chidambaram Town and was proceeding towards his home after day's work by around 8.00 p.m. At that time, Accused-1 in that case Raju (since deceased) along with another Accused by name Tamilarasan waylaid the De-facto Complainant and demanded money for drinking alcohol. Since he did not have money and he refused, he was attacked by Tamilarasan with an iron rod causing grievous injury on the head and the ribs. The injured



Manikandan was protected by his neighbours and passers-by and they took him to Government Hospital. When Manikandan was undergoing treatment, based on the Hospital intimation received by the Sub-Inspector of Police, Chidambaram Town Police Station, the Sub-Inspector of Police himself had gone to the Government Hospital, Chidambaram and recorded the oral statement of the injured De-facto Complainant Manikandan. Based on the oral complaint, F.I.R in Crime No.679 of 2012 was registered. After registration of the case under grievous injury and criminal intimidation under Section 506(ii) of I.P.C, naturally the Investigation Officer went in search of the Accused and found him and attempted to arrest the Accused. Special Sub-Inspector of Police, Chidambaram Town Police Station, P.W-1 in this case, Mr.Purushothaman, was prevented from arresting Accused-1, Raju by the Accused-2 to Accused-6. Therefore, the submission of the learned Counsel for the Revision Petitioners that the principles laid by the Hon'ble Supreme Court in the case of ***D.K.Basu -vs- State of West Bengal*** had been followed. Therefore, the registration of case under Sections 225 and 224 of I.P.C and arresting him by the Police, Accused-1 to Accused-6 in this case in Crime No.682 of 2012 arose due to the resistance of Accused-1 to Accused-6 for the arrest of Accused-1 by the P.W-1 to P.W-3 in this case. The investigation report in Crime No.682 of 2012 after investigation was taken on file by the learned Judicial Magistrate II, Chidambaram as



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C.C.No.275 of 2012. Therefore, the submission of the learned Counsel for the Revision Petitioners that the offence under Sections 225 and 224 of I.P.C were not at all attracted. It is rejected, as there is no violation of the principles laid down as in the case of ***D.K. Basu -vs- State of West Bengal***. Only after the arrest was made by the P.W-1 to P.W-3, the question of violation or invoking the principles laid down by the Hon'ble Supreme Court in ***D.K.Basu vs State of West Bengal*** arises.

14. The submission of the learned Counsel for the Revision Petitioners that the principles as in the case of ***Arnesh Kumar -vs- State of Bihar*** and in the case of ***Lalitha Kumari -vs- State of Uttar Pradesh*** were not attracted. Since those judgments were pronounced by the Hon'ble Supreme Court in the year 2014 and 2013 respectively, the alleged occurrence took place during September 2012. Therefore, the submission of the learned Counsel for the Revision Petitioners is rejected.

15. The decisions cited by the Hon'ble Kerala High Court in the case of ***Kochu Kunju Kunju -vs- State of Kerala*** reported in ***1962 (2) CRI LJ 437***, in which the Accused was arrested for the offence under Sections 147 and 323 of I.P.C., where the offences were similar as the case before this Court under Sections 224 and 225 of I.P.C., wherein it was stated that



resistance to or escape from warrant of arrest where it was a case that the grounds of arrests were not informed to the Accused and to the relatives.

Therefore it was found out that the arrest in that case was illegal.

16. The facts in this case before the learned Judicial Magistrate II Chidambaram, that P.W-1 to P.W-3 in C.C.No.275 of 2012 was about to be arrested Accused-1 by P.W-1 to P.W-3 for the offences committed by him along with other Accused, Tamilarasan (not an Accused in this case) was alleged to have caused grievous injury to the De-facto Complainant Manikandan. Only if the Accused is arrested, the ground of arrest to be informed. Therefore, the argument of the learned Counsel for the Revision Petitioners that they are not issued in the earlier case will not hold good. The reported decision of the Hon'ble Kerala High Court, by his Lordship V.R.Krishna Iyer (before his elevation was the learned Counsel) is not applicable to the facts of this case. As stated earlier in the discussion about the reported decision of the Hon'ble Supreme Court in the case of ***D.K.Basu -vs State of West Bengal*** is also not attracted. The attempt of Complainant/Special Sub Inspector of Police was thwarted by the Accused-1 to Accused-6 in C.C.No.275 of 2012. Therefore, the offence under Sections 225 and 224 of I.P.C were attracted in this case. The facts were assessed by the learned Judicial Magistrate II, Chidambaram and had



convicted the Accused.

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17. The learned II Additional District and Sessions Judge, Chidambaram had on re-appraisal of the facts of evidence and had confirmed the judgment of conviction recorded by the learned Judicial Magistrate II, Chidambaram in C.C.No.275 of 2012 dated 07.01.2019 in C.A.No.35 of 2019 by judgment dated 26.07.2019. This Court on its own motion cited similar case of this Court in the case of **Koranan -vs- State** reported in **CDJ 1957 MHC 077** in which it was stated that the Accused-1 was freed by the Accused-3, Accused-5 and Accused-6. Therefore Accused-1 was acquitted that he had not forcibly or intentionally escaped from the custody. He was forcibly snatched from the custody by the Accused-3, Accused-5 and Accused-6. Therefore, the Accused-1 in that case was acquitted from the charge under Section 225 of I.P.C whereas the Revision was dismissed as against Accused-3, Accused-5 and Accused-6. The Revision was allowed as against Accused-1 and Accused-2 in re-assessment. The same ratio is applied to the facts of this case. The Accused-1 died during the pendency of the Revision. All other accused, Accused-2 to Accused-6 were now before this Court.

18. Also this Court suo-motu found out from the reported decision in



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the case of ***Bikram Singh and others -vs- State of Uttar Pradesh*** reported

in **1994 SCC (Cri) 1411**, mitigating circumstances of old offence of sentence of two years Rigorous Imprisonment was reduced to the period already undergone. Here in this case, when the revision came up for hearing, the learned Counsel engaged for the Revision Petitioners was not ready to proceed with the arguments even though, it is an old case. Therefore, this Court cancelled the bail already granted at the admission stage while admitting the Criminal Revision and directed the learned Additional Public Prosecutor to direct the Chidambaram Police to secure the Appellant and produce them before the learned Judicial Magistrate-II, Chidambaram in the light of the judgment of conviction recorded by the learned Judicial Magistrate II, Chidambaram to undergo the period of sentence which was confirmed in appeal by the learned II Additional District and Sessions Judge, Chidambaram. Also, this Court had addressed the Legal Aid Committee attached to this Court to nominate a panel Lawyer having sufficient experience on the criminal side to defend the Revision Petitioners. Accordingly, Thiru. Perumal Pandian was nominated by the Legal Aid Committee attached to this Court. Meanwhile, the report of the learned Judicial Magistrate II, Chidambaram was received by this Court stating that Accused-2 and Accused-4 surrendered before the learned Judicial Magistrate II, Chidambaram in the light of the direction issued by this Court.



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The other Accused namely Accused-3, Accused-5 and Accused-6 did not surrender. The learned Judicial Magistrate II, Chidambaram had also addressed this Court that the Inspector of Police, Chidambaram Town Police Station had reported that the Accused-3, Accused-5 and Accused-6 were absconding. Therefore, this Court did not consider the argument of the learned Counsel for the Revision Petitioners nominated by the Legal Aid Committee attached to this Court for the absconding Accused. The learned Counsel's argument was accepted only regarding the surrendered Accused-2 and Accused-4 and was expecting the report from the learned Judicial Magistrate II, Chidambaram.

19.The reliance placed by the learned Counsel for the Revision Petitioners in *1994 SCC (Cri) 1411* to consider the period already undergone as set off, since it is an old case, is accepted. Since Accused-2 to Accused-6 are already in prison, the period of imprisonment already undergone by Accused-2 to Accused-6 is treated as sentence of imprisonment, to meet the ends of justice.

In the result, **this Criminal Revision Case is partly allowed.**

The judgment of conviction dated 26.07.2019 in C.A. No.35 of 2019 passed by the learned II Additional District and Sessions Judge, Chidambaram confirming the judgment of conviction and sentence of imprisonment passed in C.C.No.275 of 2012 by the learned Judicial



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Magistrate No.II, Chidambaram dated 07.01.2019 is modified. The period of imprisonment already undergone by each of the Accused is treated as sentence of imprisonment, to meet the ends of justice.

13.06.2024

srm/shl
Internet: Yes/No
Index: Yes/No
Speaking/Non-speaking order

SATHI KUMAR SUKUMARA KURUP. J.

srm

To

- 1.The II Additional District and Sessions Judge,
Chidambaram.
- 2.The Judicial Magistrate No.II,
Chidambaram.
- 3.The Inspector of Police,
Chidambaram Police Station,
Chidambaram.

Order made in
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