



Crl.R.C.No.1527 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on 06.11.2023

Pronounced on 08.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA

KURUP

Crl.R.C.No.1527 of 2019

Ilayaraja

...Petitioner/Appellant/Accused

-Vs-

The State,
It's rep. by
The Inspector of Police,
Kattumannarkoil Police Station,
Kattumannarkoil,
(Crime No.42/2018)

...Respondent/Respondent/Complainant

Prayer:- Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code, 1973, to allow this Criminal Revision by set aside the judgment dated 16.10.2019 in Crl.Appl.No.36 of 2019 on the file of the learned II Additional District and Sessions Judge, Chidambaram, by confirming the conviction under Section 379 of IPC and sentence of simple imprisonment for 2 years and the fine amount to pay a sum of Rs.5,000/- if not paid extent of simple imprisonment for 6 month under Section 430 of IPC sentence of simple imprisonment for 1 year and the fine amount to pay



Crl.R.C.No.1527 of 2019

a sum of Rs.5,000/- the Accused not paid extent of simple imprisonment for 6 months judgment dated 28.01.2019 made in C.C.No.21 of 2018 by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil for offences under Sections 379, 430 of IPC and 21(1) of Mines and Minerals Development and Regulation Act and acquit the Petitioner.

For Petitioner : Mr.T.V.G.Kartheeban
for Mr.K.Sivaprakash

For Respondent : Mr.S.Vinothkumar
Government Advocate (Crl.Side)

ORDER

When the case came up for hearing on earlier occasion, there was no representation for the Revision Petitioner continuously. Therefore, the Criminal Revision Case was dismissed. Subsequently, the Revision Petitioner had filed Crl.M.P.No.15209 of 2023 in Crl.R.C.No.1527 of 2019 to condone the delay in filing the Petition to restore Crl.R.C.No.1527 of 2019. Crl.M.P.No.15209 of 2023 was allowed on payment of cost Rs.1,000/- to the Tamil Nadu Mediation and Conciliation Centre attached to this Court as per order dated 11.10.2023.

2. In continuation of the same, the Revision Petitioner had filed Crl.M.P.No.17489 of 2023 in Crl.R.C.No.1527 of 2019 to restore



Crl.R.C.No.1527 of 2019

Crl.R.C.No.1527 of 2019 was allowed on condition that the learned

Counsel for the Revision Petitioner to advance his argument on the date of
Petition was allowed. Therefore, cost was not imposed. Accordingly, the
learned Counsel for the Revision Petitioner submitted his arguments.

3. As per the submission of the learned Counsel for the Revision
Petitioner the Revision Petitioner was convicted by the learned District
Munsif cum Judicial Magistrate, Kattumannarkoil, in C.C.No.21 of 2018
dated 28.01.2019, the sole Accused as follows:-

Conviction under section	Sentence Awarded
Section 379 of IPC	To undergo two years of simple imprisonment and to pay a fine of Rs.5,000/- and in default, to undergo six months of simple imprisonment.
Section 430 of IPC	To undergo one year of simple imprisonment and to pay a fine of Rs.5,000/- and in default, to undergo six months of simple imprisonment.

The Trial Court ordered the sentences to run concurrently and has also
granted set-off under Section 428 Cr.P.C. for the period of incarceration
undergone by the Accused during investigation/trial.



Crl.R.C.No.1527 of 2019

WEB COPY 4. Aggrieved by the same, the Accused preferred Crl.A.No.36 of 2019 before the learned II Additional District and Sessions Judge, Chidambaram.

5. After hearing the arguments and on re-appreciation of the evidence, the learned II Additional District and Sessions Judge, Chidambaram, by judgment dated 16.10.2019 dismissed the Criminal Appeal and confirmed the judgment of the learned District Munsif cum Judicial Magistrate, Kattumannarkoil.

6. Aggrieved by the dismissal of the Criminal Appeal by the learned II Additional District and Sessions Judge, Chidambaram, this Criminal Revision Case had been filed.

7. The submission of the learned Counsel for the Revision Petitioner that the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, failed to appreciate the facts involved in this case. First and foremost objection is that, with regard to the Mines and Minerals Act. The learned District Munsif cum Judicial Magistrate, Kattumannarkoil, does not have



the jurisdiction to register the case, and laid final report before the learned

Magistrate concerned. The case ought to have been investigated not by the

Police Officers but by those Officers of the Revenue Department or Mines

and Minerals Department as a private complaint before the learned

Principal Sessions Judge of the District concerned. In this case, the case

was investigated by the Complainant himself. P.W-1 is the Complainant.

P.W-1 and P.W-2 are Grade-I Constables, P.W-3 is the Inspector of Police,

Kattumannarkoil Police Station. As per the case of the Prosecution, on

24.01.2018, by around 9 a.m., the Accused in this case is alleged to have

removed river sand from Kollidam and removed it through tractor bearing

registration No.TN 31 AM 9475 and tipper lorry bearing registration

No.TN 31 AM 9761. The Accused did not have license issued from the

Competent Authority to remove river sand from Kollidam. On vehicle

check, it was found that two vehicles did not have any permission from the

Competent Authority to remove river sand. On seeing the Police, the

drivers of both the vehicles stopped and ran away. Both the vehicles were

seized by the Sub Inspector of Police of Kattumannarkoil Police Station.

The Sub Inspector of Police of Kattumannarkoil Police Station, after

recording the statement of witnesses, Police Officials who accompanied

him laid the final report before the Court of the learned District Munsif



cum Judicial Magistrate, Kattumannarkoil, for the offences under Sections 379, 430 of IPC along with Section 21(1) of Tamil Nadu Mines and Minerals Rules.

8. The learned District Munsif cum Judicial Magistrate, Kattumannarkoil, had taken cognizance of the offences under Sections 379 and 430 of IPC and issued summons to the Accused.

9. On the appearance of the Accused, the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, furnished copies to the Accused under Section 207 of Cr.P.C. After hearing the argument of the learned Assistant Public Prosecutor for the State and the learned Counsel for the Defence/Accused, the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, had framed charges for the offences under Sections 379 and 430 of IPC. Since the Accused denied the charges, the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, ordered trial.

10. During the trial, the Prosecution had examined three witnesses, P.W-1 and P.W-2 are Grade-I Constables and P.W-3 is the Inspector of Police of Kattumannarkoil Police Station. Ex.P-1 to Ex.P-3 were marked. Ex.P-1 is the Seizure Mahazar, Ex.P-2 is the FIR, and Ex.P-3 is the report



Crl.R.C.No.1527 of 2019

of the Assistant Engineer, P.W-3, regarding the river sand removed without permission by the Accused.

11. After closing of the Prosecution evidence, the Accused was examined under Section 313 of Cr.P.C. The Accused denied the incriminating evidence. After hearing the arguments of the learned Public Prosecutor for the State and the learned Counsel for the Defence/Accused, the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, convicted the Accused for the offences under Sections 379 and 430 of IPC.

12. It is the contention of the learned Counsel for the Revision Petitioner that even though the grounds raised in this Criminal Revision Case was raised before the learned II Additional District and Sessions Judge, Chidambaram. The same was not considered by the learned II Additional District and Sessions Judge, Chidambaram, thereby dismissing the Appeal. Aggrieved by the same, this Criminal Revision Case is filed.

13. Learned Counsel for the Revision Petitioner raised objections in this Criminal Revision Case, claiming that the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, does not have the powers to try the case as per the Hon'ble Supreme Court rulings regarding the Mines and



Minerals Act. As per the Mines and Minerals Act, the learned Principal District and Sessions Judge of the District concerned is the exclusive Court for trial of the case. The Officials of the Mines and Minerals Department are to file a private complaint before the learned Judicial Magistrate and a Police Officer cannot register the case and investigate the case as an ordinary case. The learned District Munsif cum Judicial Magistrate, Kattumannarkoil, failed to appreciate those facts.

14. It is the contention of the learned Counsel for the Revision Petitioner that the Investigation Officer is the Complainant and his subordinates are the other witnesses. The learned District Munsif cum Judicial Magistrate, Kattumannarkoil, convicted the Accused based on the evidence of P.W-1 to P.W-3, which is found perverse. The judgment of the Appellate Court confirming the judgment of the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, is also erroneous. It is the further contention of the learned Counsel for the Revision Petitioner that Ex.P-3 is the valuation report by the Assistant Engineer regarding the sand seized from the tractor bearing registration No.TN 31 AM 9475. Ex.P-3 is the valuation report of the Assistant Engineer, which was marked through the Investigation Officer, P.W-3. Therefore, under the principles of fair



Crl.R.C.No.1527 of 2019

trial, the Accused was denied the opportunity, to cross examine the Assistant Engineer and the report of the Assistant Engineer was marked through Investigation Officer, in which case the valuable defence of the Accused was not put to the Assistant Engineer. The Prosecution Witnesses are Police Officials, who are duty-bound to support the evidence of the Investigation Officer as they are subordinate to him.

15. Learned Counsel for the Revision Petitioner relied on the judgment delivered in Crl.R.C.No.876 of 2019 dated 29.09.2022, stating that the Prosecution Witnesses being Police Officials, the Prosecution had not maintained the conviction based on evidence of the Complainant. Therefore, the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, having ignored the safety principles in the principles of fair trial. During trial before the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, no independent witnesses had been examined. Therefore, he seeks to set aside the judgment of the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, in C.C.No.21 of 2018 dated 28.01.2019 and confirmed by the learned II Additional District and Sessions Judge, Chidambaram, in Crl.A.No.36 of 2019 dated 16.10.2019.



WEB COPY 16. By way of reply, the learned Government Advocate (Crl.Side)

submitted that the argument of the learned Counsel for the Revision Petitioner cannot at all be sustained as there are concurrent findings by the Trial Court as well as Appellate Court regarding the defence of the Accused. The defence of the Accused was rejected by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, in paras 11 to 26.

17. The learned Government Advocate (Crl.Side) invited the attention of this Court to the observation of the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, citing the ruling of the Hon'ble Supreme Court as not applicable to the facts of this case. When there is a clear finding that the offence was registered by the Police under the provision of IPC. There is nothing erroneous in the Prosecution case. If the Mines and Minerals Act had been invoked, then the argument of the learned Counsel for the Revision Petitioner could be accepted. Here, the final report does not mention about the Mines and Minerals Act. Therefore, the judgment of the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, which was confirmed by the learned II Additional District and Sessions Judge, Chidambaram, is a well-reasoned judgment



Crl.R.C.No.1527 of 2019

and does not warrant any interference. The Revision Court cannot re-appreciate the evidence. Therefore, he seeks to confirm the judgment of the learned District Munsif cum Judicial Magistrate, Kattumannarkoil.

18. Rejoinder to the argument of the learned Government Advocate (Crl.Side), the learned Counsel for the Revision Petitioner relied on the reported judgment of this Court in Crl.R.C.No.876 of 2019 dated 29.09.2022.

Point for consideration:

Whether the order passed by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, in C.C.No.21 of 2018 dated 28.01.2019 and confirmed by the learned II Additional District and Sessions Judge, Chidambaram, in Crl.A.No.36 of 2019 by judgment dated 16.10.2019 is to be set aside as perverse?

19. Heard the learned Counsel for the Revision Petitioner and the learned Government Advocate (Crl.Side) for the State.

20. On perusal of the reported judgment of this Court cited by the learned Counsel for the Revision Petitioner in Crl.R.C.No.876 of 2019, it is also from the same Police Station. The facts are similar. The Police Officials had given a complaint and investigated. The only witnesses are Police Officials. There were no independent witnesses. Even though the



Crl.R.C.No.1527 of 2019

charge sheet contained provisions of the Mines and Minerals Act, the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, had taken cognizance only for the offences under Sections 379 and 430 of IPC and deleted the charge under Section 21(1) of the Tamil Nadu Mines and Minerals Act. The learned Judge of this Court in Crl.R.C.No.876 of 2019 had relied on the judgment in paras 7 and 14. In the light of the reasonings of the learned Judge of this Court in the Criminal Revision Case which is also a similar case by the same Police Officials and the trial conducted by the same Court. The learned Judge of this Court had set aside the judgment of conviction recorded by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, in C.C.No.21 of 2018 dated 28.01.2019 and confirmed in Appeal by the learned II Additional District and Sessions Judge, Chidambaram. Here also, it is the same. Therefore, on applying the same yardsticks, this Court set aside the judgment of conviction recorded by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, in C.C.No.21 of 2018 dated 28.01.2019 and confirmed in Appeal by the learned II Additional District and Sessions Judge, Chidambaram, in Crl.A.No.36 of 2019 in the light of the interpretation of Section 430 of IPC, which is also applicable to the facts of this case.

21. In the light of the above discussion, the point for consideration is



Crl.R.C.No.1527 of 2019

answered in favour of the Revision Petitioner and against the Prosecution.

The judgment of conviction recorded by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, in C.C.No.21 of 2018 dated 28.01.2019 and confirmed in Appeal by the learned II Additional District and Sessions Judge, Chidambaram, in Crl.A.No.36 of 2019 dated 16.10.2019 are found perverse in the light of Crl.R.C.No.876 of 2019 dated 29.09.2022 and the same is to be set aside.

In the result, the **Criminal Revision Case is allowed**. The judgment of conviction recorded by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, in C.C.No.21 of 2018 dated 28.01.2019 and confirmed in Appeal by the learned II Additional District and Sessions Judge, Chidambaram, in Crl.A.No.36 of 2019 dated 16.10.2019 is set aside. The fine amount if any, paid by the Revision Petitioner shall be refunded to him. The bail bond, if any, executed by the Revision Petitioner shall stand cancelled.

08.03.2024

cda

Index : Yes/No

Speaking/Non-speaking order

SATHI KUMAR SUKUMARA KURUP, J.,



Crl.R.C.No.1527 of 2019

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To

- 1.The II Additional District and Sessions Judge,
Chidambaram.
- 2.The District Munsif cum Judicial Magistrate,
Kattumannarkoil.
- 3.The Inspector of Police,
Kattumannarkoil Police Station,
Kattumannarkoil.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Section Officer, VR Records,
High Court, Chennai.

**Order in
Crl.R.C.No.1527 of 2019**

08.03.2024