



Crl.R.C.(MD)No.355 of 2022
and Crl.M.P.(MD)No.4536 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 30.07.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C.(MD)No.355 of 2022
and
Crl.M.P.(MD)No.4536 of 2022

Premkumar

... Revision Petitioner/Appellant/
De-facto complainant

Vs.

1.The Inspector of Police,
Emaneshwaram Police Station,
Ramanathapuram District.
(Crime No.54 of 2013)

... 1st respondent/1st respondent/
Complainant

2.Kalidoss

... 2nd respondent/2nd respondent/
Accused

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the impugned Judgment dated 18.11.2021 passed in C.A.No.20 of 2021 on the file of the Principal District cum Sessions Court, Ramanathapuram “remanding back to the trial Court for retrial” and to set aside the same and consequently direct the Sessions Court to enhance the sentence for all the offences made out against the accused which were not charged while framing of charges by the trial Court.



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For Petitioner : Mr.S.Premkumar
(Party in person)

For Respondents : Mr.S.Ravi
Additional Public Prosecutor for R1
Mr.K.Prabhu
Legal aid counsel for R2

* * * * *

ORDER

The party in person is the defacto complainant and has filed this revision challenging the order passed in C.A.No.20 of 2021 to enhance the sentence imposed in C.C.No.128 of 2017 on the file of the learned Judicial Magistrate, Paramakudi for the alleged offences 294(b), 324 and 506(ii) of IPC.

2.According to the petitioner, the accused has abused the petitioner's physical appearance and caused injury to him on 14.05.2013. Thereafter, an FIR was registered under Sections 294(b), 324 and 506(ii) of IPC. The investigating agency conducted the investigation and filed a final report before the Court below for the offences under Sections 294(b), 324 and 506(ii) of IPC and subsequently altered into Sections 294(b), 325 and 506(ii) of IPC and the same was taken on file in C.C.No.128 of 2017.



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3.During trial, on the side of the prosecution, 13 witnesses were examined as P.W.1 to P.W.13 and 9 documents were marked as Ex.P.1 to Ex.P.9 and no material objects were marked. On the side of the accused, no witness was examined and no document was marked and no materials objects were produced.

4.After full fledged trial, the learned trial Judge passed the judgment in C.C.No.128 of 2017 dated 11.11.2020 and convicted the accused for the offences 294(b), 325 and 506(ii) of IPC. Aggrieved over the same, the defacto complainant/petitioner filed C.A.No.20 of 2021 before the Principal District cum Sessions Court, Ramanathapuram. The accused also filed the C.A.No.16 of 2021 before the same Court, challenging the conviction and sentence passed against him. Both were heard together. The learned appellate Judge considering the nature of the injuries and the impact of the injuries remanded the matter to the trial Court to frame the charge under Section 326 of IPC by passing an impugned judgment dated 18.11.2021. Challenging the same, the revision petitioner/defacto complainant has filed this revision before this Court.



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5.The defacto complainant appeared as Party in person and submitted that the appellate Court has power to enhance the sentence. Without enhancing the sentence, the learned appellate Judge has erroneously remanded the matter to the Court below.

6.This Court, even though issued notice to the respondent/accused and the notice was served upon the respondent/accused, he did not appear. He has earlier appeared through a counsel and the said counsel withdrew his appearance.

7.This Court appointed Mr.K.Prabhu as amicus curiae to assist the Court. The amicus curiae has placed the Judgment of the Hon'ble Supreme Court of India and also various judgments which are as follows:

(i)Parvinder Kansal V. The State of NCT of Delhi and Anr.
Reported in AIR 2020 Supreme Court 4044;

(ii)Sanjay Kumar @ Bhondu V. The State of Bihar and another in Crl.A(DB)No.401 of 2021 of the High Court of Patna;

(iii)Bhavuben Dineshbhai Makwana V. State of Gujarat & Others reported in 2013 (3) MWN (Cr.) 268 (FB) (Guj.) of the High Court of Gujarat;

(iv)Ashok Malhotra Vs. State Government of NCT Delhi and Anr. In WP(CRL).2576 of 2018 & Crl.M.A.31082 of 2018 of the



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High Court of Delhi;

(v) Ram Murti & Ors. Vs. State in Crl.Appeal No.2610 of 1979 of the High Court of Allahabad;

(vi) Mahendiran and another Vs. State in Crl.R.C.No.1232 of 2011 of the High Court of Madras; and

(vii) Raja Vs. The State. In Crl.R.C.No.1069 of 2015 of the High Court of Madras.

He stated that the appeal to enhance the sentence under Section 372(2) of Cr.P.C. is not maintainable and he also stated that the petitioner made the inconsistent statement before the Court below. Apart from that Section 326 is not made out on the ground that the X-Ray report was not filed. In the said circumstances, he seeks for the dismissal of this revision on merits as well as on legal issue of maintainability of the appeal before the Sessions Court to enhance the sentence.

8.This Court has considered the rival submission and perused the materials available on record.

9.In view of the judgment of the Hon'ble Supreme Court of India, followed by this Court, the appeal under Section 372(2) of Cr.P.C. to enhance the sentence imposed by the Court below is not maintainable. Hence, the learned appellate



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Judge has correctly remanded the matter to the trial Court to frame the charge under Section 326 of IPC.

10.In the said circumstances, this Court finds no merit in the contention of the party in person. Hence the judgement of the learned trial Judge is in accordance with law and other arguments made by the amicus curiae that the offences were not made out under Section 326 of Cr.P.C. is concerned, it is left open to the accused to place all the materials before the learned trial Court at the time of trial.

11.With these observations, this Court inclines to dispose of this revision with the following terms:

(i)the judgement in C.A.No.20 of 2021 on the file of the Principal District Cum Sessions Court, Ramanathapuram, is hereby confirmed.

(ii)the grievance of the petitioner is that a defamatory statement was made by the respondent/accused and it is open to the petitioner to file the appropriate defamatory proceedings before the Court below as per law.



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12.The High Court Legal Services Committee, Madurai Bench of Madras High Court, Madurai is directed to pay the necessary fee to the legal aid Counsel Mr.K.Prabhu as per rules.

13.Accordingly, this Criminal Revision Case stands disposed of. Consequently, the connected criminal miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
RJR/vsg



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To

- 1.The Principal District cum Sessions Court, Ramanathapuram.
- 2.The Judicial Magistrate Court, Paramakudi.
- 3.The Inspector of Police,
Emaneshwaram Police Station,
Ramanathapuram District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.
- 6.The Senior Administrative Assistant,
High Court Legal Services Committee,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

RJR/vsg

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