



Crl.R.C.(MD)No.39 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.02.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

Crl.R.C.(MD)No.39 of 2024

and

Crl.M.P(MD)No.499 of 2024

Nazar Ahmed @ Nazar

.. Petitioner

Vs.

1.The Inspector of Police,
Kottar Police Station,
Nagercoil,
Kanyakumari District,
Crime No.345 of 2009

2.Mujeeb Rahman

... Respondents

(R2 is impleaded vide order of this Court
dated 05.02.2024 made in Crl.M.P(MD)
No.1149 of 2024)



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PRAYER : Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records of the impugned order passed in S.C.No.93 of 2010 on the file of the learned Chief Judicial Magistrate, Nagercoil, dated 25.08.2011 and the same was modified in Criminal Appeal No.78 of 2011 by the learned Fast Track Mahila Court, Nagercoil, Kanyakumari District, dated 30.08.2016 and set aside the same as illegal by allowing this Criminal Revision Case.

For Petitioner : Mr.A.S.Abul Kalaam Azad

For Respondents : Mr.M.Muthumanikkam – for R1

Government Advocate (Crl. side)

Mr.N.Jeyam Siddharth – for R2

ORDER

Challenging the dismissal order passed by the learned learned Fast Track Mahila Court, Nagercoil, Kanyakumari District, in Criminal Appeal No.78 of 2011, dated 30.08.2016, the present Criminal Revision has been filed by the petitioner.



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2. The case of the prosecution is that, on 31.03.2009, A1 called the defacto complainant to his over phone for settling the family dispute. At about 20.00 hours on the said date, when the Defacto Complainant along with his brother's son Rabeek and his sister's husband Baseer proceeded towards the house of A1 at Elankadai Ahamed Nager turning, where A1 and A2 were standing with the common intention of assaulting the Defacto Complainant. While A1 questioned the arrival of the Defacto complainant, the Defacto Complainant replied that he came there to see his daughter-in-law. Immediately A-1 uttering as "நீ உயிருடன் இருந்தால் தானே உனது மருமகளை பார்க்க வருவாய் இன்றோடு நீ செத்து தொலைந்துபோ" assaulted the Defacto Complainant with an iron rod in the inner side of the left eye and on the cheek just below the left eye and caused injuries. A2 assaulted the Defacto Complainant with an iron rod on the right side of the forehead and caused injury.

3. In order to prove the guilt of the accused, the prosecution, during trial, had examined eight witnesses as P.W.1 to



P.W.8 and marked ten exhibits as Ex.P.1 to P10 and further marked one Material Object as M.O.1. The Accused / petitioner herein denied the incriminating evidence against him and did not choose to lead any evidence on his behalf.

4. The prosecution, after completion of investigation, filed the charge sheet against the accused.

5. The trial Court framed the charges against A1 for the offences under Sections 307, 324 r/w 34 IPC., and as against A2, for the offences under Sections 324, 307 R/W 34 IPC. After an elaborate trial, the trial Court convicted and sentenced the accused which reads as under:

Rank of Accused	Offences	Imprisonment	Fine	Default
A1	Sec.326 IPC	5 years RI	Rs.3000/-	3 months R.I
A2	Sec.323 IPC	-	Rs.1000/-	1 month S.I

But the trial Court acquitted A1 for the offence under Sections 307 and 324 r/w 34 IPC., and A2 for the offence under Sections 307 r/w 34 IPC.



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6. Aggrieved over the same, A1 preferred an appeal in Crl.A.No.78 of 2011, on the file of the learned Sessions Judge, Fast track Mahila Court, Nagercoil, Kanyakumari District. The lower appellate Court also confirmed the conviction, but reduced the sentence alone to 2 years R.I, for the offence under Section 326 IPC., however confirmed the fine amount. Against which the present Criminal Revision has been filed by A1.

7. Earlier, on 05.02.2024, when the matter was taken up for hearing Mr.A.S.Abul Kalaam Azad, the learned counsel appearing for the Revision Petitioner and Mr.N.Jeyam Siddharth, learned counsel for R2 seek permission of this Court to compound the offence and seek a short accommodation. Hence, the matter was directed to be listed today.

8. Today when the Criminal Revision Petition is taken up for hearing, Mr.A.Thiruvadi Kumar, learned Additional Public



Prosecutor appearing for the State would submit that the evidence of P.W.1 corroborated by the evidence of P.W.2 and the medical evidence substantiate the factum of injury on the left eye of the victim and further loss of vision. The evidence of injured witness stands in the high pedestal and the same cannot be rejected simply. He further submitted that the concurrent findings of the facts would not be interfered by this Court while exercising the Revisional powers.

9. I have heard the learned counsels appearing on either side as well as the parties, who appeared before this Court.

10. On perusal of the records, it is seen that the evidence adduced by the prosecution had clearly proved the charges. The evidence of injured witness stands on a high pedestal and the same cannot be rejected. Further, there is no major contradiction or discrepancy to doubt the presence of the occurrence. The evidence of PWs.1 and 2 were consistent and cogent with regard to the presence of accused and the victim at the scene of the alleged offence and accused



assaulted the victim and caused injuries on the defacto complainant.

In view of the aforesaid discussion, this Court is of the view that the trial Court as well as lower appellate Court have rightly convicted the appellant / A1 and there is no illegalities or infirmities in the order passed by the Courts below. Hence, this Court finds no reason to interfere with the same.

11. However, taking note of the compromise filed by the parties, to compound the offence, the question that arises for decision is whether permission to compromise can be granted in a non-compoundable offence of Section 326 of IPC. As such, it is not possible to record the compromise but it is well settled proposition that though compromise cannot be recorded for a non-compoundable offence, the effect of compromise can be taken into consideration while awarding the sentence. The appellant has been in custody for a period of five days. In my opinion, the ends of justice would be secured if the sentence of imprisonment awarded against the appellant is reduced to the period already undergone.



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12. In view of the foregoing discussions, this Court is of the view that the appellant has already suffered imprisonment for some time and on account of this protracted litigation at different stages, he has also suffered a lot of financial hardship and mental agony. He was also released on bail a month back by this Court. Therefore, the ends of justice will be met, if he is not required to suffer further imprisonment to serve out the sentence passed against him and the sentence of imprisonment should be reduced to the period already undergone by him in the special facts of the case. The Criminal Revision Petition is disposed of accordingly. The bail bonds will stand discharged. Consequently, the connected miscellaneous petition is closed.

06.02.2024

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

RM



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Copy to

1.The Fast Track Mahila Court,
Nagercoil,
Kanyakumari District,

To

1.The Inspector of Police,
Kottar Police Station,
Nagercoil,
Kanyakumari District,

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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VIVEK KUMAR SINGH, J.

RM

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