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Crl.A.No.562 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2023

PRONOUNCED ON : 22.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.A.No.562 of 2016

Vijaya

... Appellant / Defacto Complainant

-Vs-

1. The State Rep. By
Deputy Superintendent of Police,
Ranipet Division,
Walajha Police Station,
Vellore District.

... 1st Respondent / Complainant

2. V.K.Vasudevan

... 2nd Respondent / Accused

PRAYER: Criminal Appeal is filed under Section 372 of Criminal Procedure Code, praying to set aside the judgment of acquittal passed in S.C.No.2 of 2015 dated 24.11.2015 on the file of the learned Principal and Sessions Judge, Vellore, Vellore District and consequently, thereby allow this Criminal Appeal.



Crl.A.No.562 of 2016

For Appellant : Mr.V.Venkatesan
Legal Aid Counsel.

For Respondents : Mr.L.Baskaran (for R1)
Government Advocate (Crl.Side).
Mr.L.Mahendran (for R2)

JUDGMENT

PW1-Defacto complainant, is the appellant herein. This appeal is against the order of acquittal passed in S.C.No.2 of 2015 by the learned Principal and Sessions Judge, Vellore dated 24.11.2015, wherein the sole accused (2nd respondent) is acquitted from all charges.

2. The Deputy Superintendent of Police, the 1st respondent herein filed a charge sheet against the 2nd respondent, alleging commission of offence under Sections 294(b) and 506 (i) of IPC and Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1980.

3. In support of the charges, prosecution has examined the defacto complainant-Vijaya, as PW1 and her husband-Logan as PW2 and other



Crl.A.No.562 of 2016

WEB COPY

witnesses viz., PW3 to PW10. Further, exhibits viz., Ex.P1 to Ex.P10 and one material object-Kodak Camera [M.O.1] were marked.

4. On consideration of both oral and documentary evidences, the learned Principal and Sessions Judge, has come to the conclusion that the evidence of PW1 and PW2 are not trustworthy; it is a counter blast to take revenge for the audit report submitted by the accused/2nd respondent, which resulted in the disqualification of the defacto complainant [PW1], in holding the post and accordingly, ordered acquittal.

5. Heard the learned legal-aid counsel appearing for the appellant/defacto complainant, the learned Government Advocate appearing for the 1st respondent-police and the learned counsel appearing for the 2nd respondent/accused.

6. The case of the prosecution is that on 21.12.2012 at about 12.00 hours at V.C.Mottur Village in V.C.Mottur Panchayat Union Office in the



Crl.A.No.562 of 2016

President room, the witness Vijaya, who belongs to Schedule Caste Community was doing her regular office work in the capacity as President of the V.C.Mottur Panchayat Union, at that time, the accused K.V.Vasudevan, who belongs to Vanniyar Community entered inside the above Panchayat Union Office as in the capacity of Secretary to V.C.Mottur Panchayat Union, intentionally insulted and intimidated the said President Vijaya on the ground of her schedule caste with the following words, “நீ என்னடி கீழ்சாதிக்காரி தேவடியா தலைவர் பதவிக்கு வந்துட்டா நான் உன்னை உட்டுருவேனா? நீ தாழ்ந்தசாதி, நாற்காலையில் உட்காரலாமா? அதில் தீட்டுப்பட்டுவிட்டதே, முறைசாதி யாரடி நீ என்னை ஒன்றும் செய்ய முடியாது நான் வீர வன்னியன் எனது பெரும்படை நான் என்ன செய்தாலும் யாரும் ஒன்றும் செய்ய முடியாது” and humiliated the said Vijaya, in the public view. The Deputy Superintendent of Police, Ranipet Sub Division has laid final report as against the accused for the offences U/s.294(b) and 506(i) of IPC and Section 3(1) (x) of SC/ST (POA) Act, 1989.

7. The charges are framed against the accused as stated above. It is seen from the records that PW1, is the complainant and the victim viz.,



Crl.A.No.562 of 2016

WEB COPY

Vijaya, PW3-Rathinam, PW4-Ganapathi and PW5-Gajendran are the eye witnesses, apart from that, PW3 and PW4 are the witnesses in Observation Mahazar; PW2-Logan, who is the husband of PW1, is a hearsay witness, who accompanied PW1, while she was lodging complaint before the police; PW6-Gopi is the witness, who signed in confession statement of the accused and also signed in the Observation Mahazar; PW7-Murali and PW8-Vijayakumar are the Thasildar and Deputy Thasildar, who issued Community Certificates to PW1 and the accused, respectively; PW9-Bharathi, is the S.I. of Police, Ranipet, who registered the FIR, on the complaint of PW1; and PW10-Tmt.S.P.Lavanya, is the Deputy Superintendent of Police, who investigated the case and laid final report as against the accused.

8. Further, the records reveals that PW7-Murali and PW8-Vijayakumar, the Thasildar and Deputy Thasildar, respectively deposed that they have issued community certificates to PW1-Vijaya, as a member of Scheduled Caste Community and that the accused-Vasudevan, belongs to a



Crl.A.No.562 of 2016

WEB COPY

Most Backward Community, a non-member of the Scheduled Caste community. The community certificates have been marked as Ex.P6 and Ex.P7 respectively.

9. In order to sustain the prosecution under Section 3(1)(x) of SC/ST Act, twin ingredients are ought to be satisfied viz.,

(a) the accused should be a member of the non SC community, while the defacto complainant should belong to SC/ST community.

(b) The accused ought to have uttered caste word in the public place in a public view.

10. The suggestive case of the defence is that there was a previous enmity in between the accused and PW1. PW1 committed corrupt practice as a President of Union Office and the same was reported by the accused to the higher authorities and thereby, action was taken as against PW1 and the power of issuing cheque by PW1 was suspended by the concerned Block Development Officer. Thereby, PW1 is having grudge over the accused.



Crl.A.No.562 of 2016

WEB COPY

PW1, her husband-PW2, and other witnesses PW3 to PW6, havee joined together and made allegations as against the accused before the District Collector and also made agitation for the same. Thereby, PW1 lodged a false complaint against the accused, taking the privilege of SC/ST Act.

11. After going through the findings rendered by the learned Principal and Sessions Judge and also the answer elicited in the cross examination of PW1 and her husband-PW2, I find that the answer elicited in the cross examination of PW1 and PW2, probabalises the suggestive case, which are discussed infra.

12. As per the records, the occurrence is alleged to have taken place on 21.12.2012, but the complaint was lodged on 31.12.2012 and there is a delay of 9 days. Further, as per the charge framed by the learned Principal and Sessions Judge and the allegations levelled against the accused, the scene of occurrence has taken place within the campus of the Panchayat Union office. In the chief examination, the evidence of PW1 and PW2 are in



Crl.A.No.562 of 2016

WEB COPY

support to the charge, but the case of the prosecution was demolished by the defence counsel in the trial Court during the cross examination as could be evident in the cross examination, as discussed infra.

13. It reveals that during the course of cross examination of PW1, she herself had categorically admitted that the accused, who is the Secretary of the V.C.Mottur Panchayat Union, has lodged a complaint as against her, as if she had swindled the public money to an extent of Rs.30,00,000/- from the Panchayat Union Office. On the basis of complaint lodged by the accused, after investigation, the power of signing in the cheque was suspended by the higher Authorities of PW1. Apart from that, show-cause notice was also issued by the higher Officials calling upon her, while she was in the post of President. In the above matter, still the enquiry is pending.

14. It is significant to note that PW1, in her cross examination has deposed that her Union Office entrance was next to the northern side road



Crl.A.No.562 of 2016

and on the front of northern side, there is a main room i.e., 15 feet away from the office entrance, her room was situated. At one point of time, she had deposed evidence that she is not having any mobile, but on the other time, she deposed that on the date of occurrence itself, she informed the message to her husband-PW2 through mobile.

15. Yet another point is that from the answers elicited in the cross examination of PW1, the PW1 had admitted that the alleged utterance of caste word is inside her office room, which is a closed one and the PW1, is the President of the Panchayat Board while the accused is the Secretary of the Panchayat, who is looking after the accounts. The relevant portion from the cross examination of PW1, is as under:

“....ஆஜர் எதிரி, என்னுடைய அலுவலகத்தில் செயலாளராக இருந்தார். அவர்தான் பஞ்சாயத்து கணக்குகளை பராமரித்து வருவார்.....

.....நான் முறைகேடாக ரூ.30லட்சம் பஞ்சாயத்து யூனியன் கணக்கில் இருந்து எடுத்ததாக ஆஜர் எதிரி, என் மீது பிடிஓ.விடம் புகார் கொடுத்து, அதன்பேரில் நடவடிக்கை எடுக்கப்பட்டது. ஆனால் அது பொய் புகாராகும். எதிரி கொடுத்த புகாரின் பேரில் காசோலை கையெழுத்திடும் அதிகாரத்தை உயர் அதிகாரிகள் ரத்து



Crl.A.No.562 of 2016

WEB COPY

செய்துவிட்டனர். 31.08.2012ம் தேதியில் பஞ்சாயத்து தலைவர் பதவியில் இருந்து ஏன் பணிநீக்கம் செய்யக்கூடாது என எனக்கு பஞ்சாயத்து சட்டப்படி அறிவிப்பு அனுப்பினார்கள். தற்போது மேற்படி விசாரணை நிலுவையில் உள்ளது.....

.... உயர் அதிகாரிகள் ஆய்வு செய்து தான் என்மீது நடவடிக்கை எடுத்தனர். மேற்படி காரணங்களினால் எனக்கும், ஆஜர் எதிரிக்கும் விரோதம் இருந்து வந்தது.....

.... பணமோசடி முறைகேட்டில் ஆஜர் எதிரிதான் என்னை மாட்டிவிட்டார்....

.... பஞ்சாயத்து அலுவலகத்திற்குள்ளே வந்துதான் ஆஜர் எதிரி போட்டோ எடுத்தார்.... அலுவலகத்தில் என் அனுமதி இல்லாமல் யாரும் வரமுடியாது.... அந்த அறை எனக்காக ஒதுக்கப்பட்ட தனி அறையாகும்.”

16. In the cross examination of PW3-Rathinam, it is deposed as follows:

“நான் ஒரு புகார் கொடுத்தேன். அந்த வழக்கு இன்னும் விசாரணைக்கு வரவில்லை. எதிரி மீது நடவடிக்கை எடுக்கும்படி ஆர்ப்பாட்டம் செய்தோம். அதில் நான் கலந்துக்கொண்டேன்..... நான் ஏரியில் மீன் ஏலம் எடுப்பேன். 8 வருடமாக நான் ஏலம் எடுத்துள்ளேன். ரூ.3000/-த்திற்கு ஏலம் எடுப்பேன். நான் தவறு செய்கிறேன் என்று சொல்லி, ஊராட்சியே ரூ.60,000/-த்திற்கு ஏலம் விட்டது. அதிலிருந்து எனக்கு ஏலம் தரப்படவில்லை....

.... பஞ்சாயத்து கேட்டிலேயே நின்று போட்டோ எடுத்தார். அங்கேயே நின்று தான் திட்டினார்...”

17. Therefore, the learned Principal and Sessions Judge taking into



Crl.A.No.562 of 2016

WEB COPY

consideration the admissions made by the defacto complainant (PW1) and her husband (PW2) and the alleged independent witness (PW3), has found that Ex.P1-complaint itself is a counter blast to take revenge against the accused, who is the Panchayat Secretary and who had found that the PW1, a member of the Scheduled Caste Community, as the President of the Panchayat Union, has misappropriated funds to an extent of Rs.30 Lakhs from the Panchayat Union accounts and the accused made a complaint to the Block Development Officer and on the complaint of the accused, action has been taken and cheque signing authority of PW1 was suspended and the District Collector has issued a show cause notice, as to why she should not be removed from the office of the Panchayat Board President. This is the admission made by the evidence of PW1-Vijaya in the witness box.

18. Accordingly, the learned Principal and Sessions Judge held that in view of the audit report submitted by the accused, a false case has been foisted against the accused and has rightly come to the conclusion that the suggestive case of the defence is more probable than the prosecution case



Crl.A.No.562 of 2016

and the prosecution case is unbelievable and the evidence of PW1, PW2 and PW3 are unreliable.

19. Further, the learned Principal and Sessions Judge also found that though PW2, who is the scribe of the complaint, who had also deposed evidence that as if they had lodged a complaint even on the date of occurrence itself at 1.00pm, on the evidence of the witnesses concerned, it is found that the complaint was lodged even on the date of occurrence and also on subsequent dates before Ex.P1-Complaint. But all the complaints were buried by the prosecution. The trial Judge, has further observed that the President room was situated in Panchayat Union Office in a separate place and no one can have access directly to that room. Under such circumstances, the allegations that the accused degraded the caste of PW1, within the public view is not believable one. Furthermore, with regard to topography, each witnesses deposed contrary to each other.



Crl.A.No.562 of 2016

WEB COPY

20. Therefore, the learned Principal and Sessions Judge, arrived at the conclusion that there is a delay in filing the FIR and the President room is situated in the Panchayat Union office and is a separate place and no one could have access directly to that room and even as per the allegation, PW1 while she was working as President, the accused who is the Panchayat Secretary entered the room and the PW2-scribe [husband of PW1] has stated that they have given complaint even on the date of the occurrence and accordingly, held that the prosecution has not proved the case beyond reasonable doubt and the suggestive case of the defence was probable from the admission made by the private prosecution witnesses, as stated supra and accordingly, acquitted the accused.

21. In view of the above, I do not find any reason to interfere with the well reasoned judgment of the trial Court and it does not suffer from any illegality or irregularity warranting interference in exercise of powers under Section 378 of Criminal Procedure Code. This Court has also taken note of the scope of the appellate Court under Section 378 of Criminal Procedure



Crl.A.No.562 of 2016

WEB COPY

Code, as to the appeal against the order of acquittal. Accordingly, the Criminal appeal is devoid of merits and hence, dismissed. The judgment of acquittal passed in S.C.No.2 of 2015 dated 24.11.2015 on the file of the learned Principal and Sessions Judge, Vellore, Vellore District, is confirmed.

22.06.2023

Index: Yes / No
Speaking/Non-Speaking order
Neutral Citation: Yes/No.
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To

1. The Principal and Sessions Judge,
Vellore.
2. The Deputy Superintendent of Police,
Ranipet Division, Walajha Police Station, Vellore District.
3. The Public Prosecutor,
High Court, Madras.



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Crl.A.No.562 of 2016

RMT. TEEKAA RAMAN, J.

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Pre-delivery Judgment made in
CRL.A.No.562 of 2016

22.06.2023

Page 15 of 15