

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.1009 of 2009

E.Muniraj

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Petitioner

Versus

1. Ramamoorthy
2. Narasimman
3. Kattupakkam Krishnan
4. Purushothaman
5. Malli
6. Hari
7. State rep.by
Inspector of Police
Tiruttani Police Station
Tiruttani
Thiruvallur District.

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Respondents

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the Order dated 17.08.2009 passed by the learned Assistant Sessions Judge, Thiruvallur, Thiruvallur District in S.C.No.264 of 2007.

For Petitioner : Mr.T.Vijayaraghavan

For Respondents : Mr.Ilanthirayan for
M/s.Sai, Bharath and Ilan
for RR1 to 6
Mr.V.Arul
Government Advocate (Crl.side)
for R7

ORDER

The petitioner, who was examined as PW2 before the Court below, has come forward with this Criminal Revision Case aggrieved by the order dated 17.08.2009 passed in S.C.No.264 of 2007 by the learned Assistant Sessions Judge, Thiruvallur, Thiruvallur District in and by which the private complaint filed by the petitioner was dismissed and

the accused were acquitted of the offences under Sections 148, 447, 427, 294(b), 323, 323 r/w 149, 324, 324 r/w 149 and 307 (4 counts) of IPC.

2. The case of the prosecution is that on 21.08.2006 at about 9.30 a.m due to land dispute, the accused persons assembled with a common motive to attack the defacto complainants by holding lethal weapons and also threatened to kill them. Further they also abused the complainants by referring to their caste name in filthy language. Hence the complaint has been preferred as against the accused persons for the alleged offence under Sections 147, 148, 324, 294(b), 307 r/w 149 IPC. On receipt of the final report, the case was taken on the file of the learned Judicial Magistrate, Tirutanni, after the appearance of the accused persons and also after serving them with free copies of the documents. Since the offence is triable by the Court of sessions, the entire records were transmitted to the file of the learned Principal Sessions Judge, Tiruvallur, who in turn, transferred the same to the file of the learned Assistant Sessions Judge, Tiruvallur and it was taken on file as S.C. No.264 of 2007.

3. During the course of trial, the prosecution examined PWs1 to 9, marked Exs. P1 to P11, besides M.Os.1 to 3. The trial court dismissed the complaint preferred by PW2 on the ground that the prosecution did not prove the case beyond reasonable doubt and accordingly, acquitted all the accused from the offences alleged.

4. The learned counsel for the petitioner would contend that the Court below had failed to consider the fact that in the incident, PWs.1, 2, 3 and 5 had sustained injuries. He would further contend that the Court below had dismissed the complaint preferred by the petitioner on the ground that already there is a civil dispute pending between the parties and hence there was a motive for preferring this complaint. Further he would state that the Court below also failed to take into consideration the fact that in the alleged occurrence, the properties were also damaged and the weapons used for attacking was also seized. Considering all these facts and the evidences adduced on the side of the defacto complainant, the Court below should have convicted the accused persons. Learned counsel for the petitioner would also submit that the investigation officer should not have registered two different cases on the same incident and he should have closed one case as mistake of fact. Accordingly, he would pray for setting aside the order of acquittal passed by the Court below.

5. Learned counsel appearing for the respondents 1 to 6/accused would submit that this is a case and counter case. The respondents have already filed a complaint as against the petitioner herein; a case was also registered and that also ended in acquittal. Accordingly, he would submit that the court below after analysing the entire oral and documentary evidence adduced on either side had acquitted the accused. He would also contend that merely because a civil dispute is pending between the parties, that by itself will not show, who is the aggressor and according to the respondents/accused persons, the revision petitioner herein is the

aggressor. Therefore, the Court below after considering all these facts have come to the correct conclusion and acquitted the accused, warranting no interference in this revision.

6. Learned Government Advocate (Criminal side) appearing on behalf of the respondent-police would submit that the injured witnesses have been examined and the Court below after taking into consideration the contradiction in the witnesses has acquitted the accused.

7. Heard all parties concerned.

8. On a careful perusal of the judgment passed by the Court below, it is seen that in respect of the very same occurrence two cases have been filed and both have ended in acquittal. The arguments advanced by the learned counsel for the petitioner that two cases have been registered in respect of the very same incident cannot be accepted in view of the following judgments of this Court:

1. 1990 L.W.(Crl.) 45(Part I) [Somu and 5 others vs. State]

2. [1999 Madras Law Journal Reports (Crl.) 252 [Duraishamy and another vs. State by Sub Inspector of Police, Kodumudi]. wherein this Court by referring to the Madras Police Standing Order 588 A has held that it is only directive in nature and it is not mandatory. It is the duty of the Investigating Officer to find out, who is the aggressor in the cases filed and file charge sheet based on the same. However, if the Investigating Officer finds that both parties have committed the offence, the Police Standing Order does not prevent him from filing charge sheets in both the cases.

9. In the case on hand, the Court below has categorically held that as per the complaint, the occurrence took place on 21.08.2006 at 9.30 a.m and in that incident, PW1 has stated that the fifth respondent/accused had attacked him; however as per Ex.P2 marked on their side, it is seen that the fifth respondent/ accused had attended the school at 9.00 am itself. Therefore, the present complaint, as if the fifth accused came to the spot in the morning and committed the offence cannot be said to correct. In fact, the fifth accused has been examined as DW2 and DW1 is the School Head Master, whose evidence corroborates with the evidence of DW2. Further as per the evidence given by the Investigating Officer, there is a prior civil litigation between the parties and to evidence the same not a single record has been produced. It is also pointed out that if there are two cases on the same occurrence, it is the duty of the Investigating Officer to take the matter to the Public Prosecutor and seek his opinion. However, no such action has taken place. It is further held that the prosecution has not proved beyond reasonable doubt that the accused persons have assembled together with a common motive to commit the offence and hence acquitted the accused of all charges alleged.

10. In view of the aforesaid reasons, I do not find any reason to interfere with the acquittal order passed by the Court below. Accordingly, this criminal revision case fails, and the same is dismissed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vj2

To

1. The Assistant Sessions Judge, Thiruvallur, Thiruvallur District
2. -do-thro' The Principal Sessions Judge, Tiruvellore Dt.
3. The Public Prosecutor, Madras
4. The Inspector of Police,
Tiruttani Police Station,
Tiruttani, Tiruvellore District.

+1 cc to M/s. Sai Bharath and Ilan, Advocate, sr.33890
+1 cc to M/s. T.Vijayaraghavan, Advocate, sr.33779.

Crl RC No.1009 of 2009

mp(co)
kra(10/08)

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