

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.1170 of 2008

1. Murugan
2. Ganesan

.. Petitioners

vs

1. Selvakumar
2. Vijayan
3. Subramani
4. Sampath
5. Venkatachalam
6. State rep.by
Inspector of Police
Mecheri Police Station
Mettur Taluk
Salem District.

.. Respondents

Revision Petition filed under Sections 397 read with Sec. 401 of Cr.P.C. against the order dated 20.06.2008 passed by the learned Assistant Sessions Judge, Mettur in S.C.No.323 of 2005.

For Petitioners : Mr.Ilanthiriyar
for M/s.Sai, Bharath and Ilan

For Respondents : Mr.A.Sundaravadhanan
for RR1 to 5
Mr.T.Arul
Government Advocate (Crl.side) for R6

ORDER

This Criminal Revision Case has been preferred as against the order of acquittal dated 20.06.2008 passed by the learned Assistant Sessions Judge, Mettur in S.C.No.323 of 2005 against the respondents 1 to 5/accused.

2. The case of the petitioners in brief is as follows:

On 07.03.2004 at about 3.30 p.m. due to previous enmity, while the accused persons were removing the cart track using JCP, dispute arose between the complainants/petitioners and accused/respondents 1 to 5 and they attacked each other with lethal weapons. In the said incident, both parties sustained injuries. Hence, a complaint was registered by the petitioners, before the respondent-police in Crime No.62 of 2004 for the alleged offences under Sections 147, 148, 323, 324 and 307 of IPC. However, the Court below after

conducting the trial, acquitted the respondents/accused from all the offences. Hence, this revision.

3. The main grievance of the petitioners/complainants is that even though complaint has been registered by the petitioners for serious offences including the offence under Section 307 IPC, the Investigating officer has not investigated into the crime properly and in fact, the Court below acquitted the accused persons only on the ground that there are some discrepancies in the evidence pointed out by the prosecution. Further, the Court below held that PWs.3 to 6 are relatives of PWs.1 and 2 and hence their witnesses cannot be accepted. It also held that there was a counter case relating to the alleged occurrence, however, to evidence the same, no complaint, First Information Report or charge sheet have been produced to find out the fact that who is the aggressor. Therefore, passed the order of acquittal. Accordingly, he would pray for setting aside the order passed by the Court below.

4. Learned Counsel for the respondents 1 to 5 would submit that there is a case and counter and it is the duty of the police to verify as to who is the aggressor and thereafter proceed further in the matter. In fact, the Court below has pointed out that in the evidence of PW11, the Inspector of Police had categorically admits the registration of the first information report, which is admittedly given by the respondents/accused persons. According to the respondents, the petitioners/complainants after the incident got admitted in the hospital; where the Head Constable has registered their complaint. Whereas in the case of the respondents/accused they immediately went to the police station and got their complaint registered. Hence, considering the fact that the complaint registered by the accused party is the first one, has rejected the claim of the petitioners and acquitted the respondents 1 to 5. Accordingly, he would submit that the acquittal order passed by the Court below is just, fair and reasonable and no interference is warranted.

5. Learned Counsel appearing for the respondents 1 to 5/accused would further submit that the first accused in the case, viz., Selvakumar also died on 16.07.2012 and to evidence the same, he also produced the copy of the Death Certificate. The said submission is recorded.

6. Learned Government Advocate (Crl.side) appearing for R6 would point out that though PW11, the Investigating Officer categorically stated on the registration of two First Information Reports regarding one and the same occurrence, due to his transfer he was not aware of the further course of action made in respect of the second First Information Report registered.

7. Heard all parties concerned and perused the records.

8. On a perusal of the order passed by the Court below, it is seen that the Court has given a clear finding to the effect that it is the first and foremost duty of the Investigating Officer to find out who is the aggressor and take action accordingly. It has further held that in order to prove the offence committed, the registration

of the complaint, First Information Report, Wound certificate along with the evidence should have been produced in the counter case also. However, the same has not been done by the prosecution and it is a clear case of investigation slipshod affair. It is further stated that though it is seen that both the parties have sustained injuries in the alleged incident, the same has not been proved by the prosecution. Hence, as rightly pointed out by the Court below, this vital aspect in the matter has not been done properly by the investigating officer. Consequently, the authority, viz., Inspector of Police also failed to even examine the driver of the JCP, who according to the petitioners is the aggressor when the said JCP was used to remove the cart track. The complaint itself clearly states that the dispute arose between the parties only because of the removal of the cart track by the JCP. When that being so, is not incumbent on the part of the Investigating Officer to seize the alleged JCP, which was used for removing the cart track and also enquire the driver of the JCP? However the same has not been done. Secondly, the Court below also pointed out that the witnesses examined have not specifically stated the alleged weapons used in the occurrence, whereupon two different versions have been stated in respect of the weapons used.

9. In view of the above stated reasons, since there are so much discrepancies in the evidence produced on the prosecution side and in the investigation conducted by the Investigating Officer, I do not find any reason to interfere with the order of acquittal passed by the Court below. At this stage, this Court can only sympathize with the petitioners/complainants as the very charge itself falls flat because of the wrong investigation done by the Officer concerned.

10. In the result, this Criminal Revision Case is dismissed by upholding the order of acquittal passed by the Court below.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vj2

To

1. The Assistant Sessions Judge, Mettur
2. The Public Prosecutor, Madras

3. The Section Officer
Crl.Section,
High Court, Madras

- 1 cc to M/s. Sai Bharath & Ilan, Advocate, Sr. 27974
1 cc to Mr.A.Sundaravadhanan, Advocate, Sr. 28656