



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

Cr1.A.No.31 of 2007

Ezhumalai

.. Appellant/Complainant

Vs.

K.Venkatesan

.. Respondent/Accused

Prayer: Criminal Appeal is filed under Section 378 of Cr.P.C., against the judgment of acquittal dated 26.07.2006 in C.C.No.344 of 2004 on the file of the Judicial Magistrate's Court No.I, Poonamallee.

For Appellant : Mr.N.Sankaravadivel

For Respondent : Mr.A.M.Rahamath Ali

J U D G M E N T

This Criminal Appeal arises out of the judgment of acquittal dated 26.07.2006 in C.C.No.344 of 2004 on the file of the Judicial Magistrate's Court No.I, Poonamallee.

2.The appellant and the respondent are own brothers and there are two properties, which are joint family property of both the parties. It was mutually agreed by both the appellant/complainant and respondent/accused that the properties situated at Jai Nagar, Valasaravakkam, comprised in S.No.214 to an extent of 2666 sq.ft. and S.No.215/1 to an extent of 1417 sq.ft. which stands in the name of the accused to be transferred in favour of the appellant for sale and in turn, the accused undertakes to receive a sum of Rs.2,00,000/- towards the said arrangement. In terms of such arrangement, the accused had executed a general power of attorney in favour of the appellant empowering him to sell the aforesaid properties. On the strength of the power of attorney, the appellant sold the property in S.No.215/1. But the accused without sending



WEB COPY

any notice to the appellant cancelled the power of attorney and trespassed into the property situated in S.No.214 to an extent of 2666 sq.ft. Hence, the appellant/complainant filed a suit for partition and separate possession in O.S.No.123 of 2000 and also filed another suit in O.S.No.125 of 2002 on the file of the District Munsif Court, Poonamallee for injunction and an interim injunction was granted restraining the respondent/accused to interfere with the possession of the property in S.No.214.

3.The case of the appellant is that during pendency of the suit, on 09.03.2002 at about 8.00 a.m., on receipt of Court notice, the accused trespassed into the house of the appellant and made criminal intimidation. On the same day, the appellant lodged a complaint before Valasaravakkam police station and the same was not entertained by the police. Therefore, the appellant forced to file a private complaint against the accused before the Court on 10.03.2002 and it was referred to Sub-Inspector of Police, Valasaravakkam police station under Section 156(3) Cr.P.C. for investigation and the same was registered in Crime No.153 of 2002 under Sections 448, 504 and 506(i) IPC and the final report was filed as "Mistake of facts". Hence, the appellant preferred private complaint against the accused for offences under Sections 406, 448, 504 and 506(i) IPC.

4.The trial Court has taken cognizance of offences only under Sections 448 and 506(i) IPC, after recording the sworn statement. Since the accused pleaded not guilty, the trial Court examined P.W.1 to P.W.4 and marked Exs.P1 to P4 on the side of the complainant and on the side of the respondent, Ex.D1 was marked. The trial Court after considering the oral and documentary evidence, acquitted the accused, against which, the present criminal appeal is preferred by the appellant/complainant.

5.Challenging the judgment of acquittal passed by the trial Court, learned counsel for the appellant/complainant submits that the trial Court has not properly appreciated the evidence of P.W.1 to P.W.3 and also P.W.4, who is an independent witness and Ex.P4/rental agreement between the appellant and one Saravanan. It is further submitted that P.W.4/independent witness deposed about the criminal intimidation made by the accused. But the trial Court erroneously disbelieved the evidence of P.W.4 by holding that the appellant had not proved the ownership of the house. Hence he prayed for conviction of the accused/respondent herein.

6.Resisting the same, learned counsel for the respondent/accused submits that P.W.1/complainant by name Ezhumalai is having enmity towards the respondent/accused. P.W.2 is none other than the wife of P.W.1 and P.W.3 is father-in-law of P.W.1, so they are close relatives of P.W.1 and hence, their evidence are rightly discarded by the trial Court. The evidence of P.W.4, who is alleged



WEB COPY

to be the eye witness, has not supported the case of the complainant. It is further submitted that the judgment of acquittal cannot be set aside unless the judgment is perverse. If two views are possible, the view favouring the accused shall be taken into account. As per the evidence of P.W.4, the accused was standing in the gate and abused the appellant, but he has not stated anything about that the accused trespassed into the property. The trial Court has considered all the aspects in proper perspective and rightly acquitted the accused. Hence, he prayed for dismissal of the appeal.

7. Considered the rival submissions made on both sides and perused the entire materials available on record.

8. The admitted facts are as follows:

The appellant and respondent herein are brothers and the disputed property is their joint family property and patta has been changed in the name of the respondent. On intervention by some mediators, there was an oral agreement between the appellant and respondent and in pursuance of the same, Ex.P1 power of attorney was executed by the respondent in favour of the appellant, for which, the appellant ought to have paid Rs.2,00,000/- to the respondent. It is also an admitted fact that the appellant had sold the property in S.No.215/1 to an extent of 1417 sq.ft., but the appellant did not pay the amount of Rs.2,00,000/- to the accused as agreed by him. Hence, the accused cancelled the power of attorney. So the appellant herein has filed a suit for partition of his share in the property in O.S.No.123/2000 on the file of the Sub-Court, Poonamallee. It is alleged that the respondent had cut down the trees planted in S.No.214. Immediately, the appellant filed O.S.No.125 of 2002 on the file of the District Munsif Court, Poonamallee for injunction and also obtained interim injunction. The above facts are not disputed.

9. The only point to be decided is that after receipt of summons in the suit, whether the respondent herein had trespassed into the house of the appellant and made criminal intimidation? It is appropriate to consider the ingredients of Section 448 IPC, which reads as follows:

Essential ingredients of Section 448 IPC:

- (i) Complainant was in possession of the property.
- (ii) The property was
 - (1) building, tent or vessel used as human dwelling
 - (2) building used as, (1) place of worship (2) for custody of property.
- (iii) Accused entered into such building, tent or vessel.
- (iv) Accused having lawfully entered into such building remained there unlawfully.
- (v) With intent to commit offence of insult, annoyance, intimidation.



WEB COPY

10.It is the duty of the appellant to prove that he is in possession as owner of the house and the accused had trespassed into his house. Considering the evidence of P.W.1 to P.W.3, they are close relatives. Only P.W.4 is an independent witness, but he has not spoken about the trespass alleged to have committed by the respondent.

11.Furthermore, learned counsel for the respondent has drawn attention of this Court through the evidence of P.W.2, wife of P.W.1. In her evidence, she has fairly conceded that in the Ground floor of their house, mother of the appellant and respondent is residing. As per the evidence of P.W.4, the accused was standing in the gate and abused the appellant. In such circumstances, the appellant has failed to prove that the respondent had trespassed into the house. In Ex.P4/rental agreement and in the description of property, the address was mentioned as "No.3, 8th street, Jai Nagar", which are one and the same.

12.It is pertinent to note that P.W.2 herself admitted that mother of both the parties is residing in the ground floor of her house. In such circumstances, I am of the view, ingredients of Section 448 IPC have not been made out and the trial Court rightly acquitted the accused for an offence under Section 448 IPC.

13.Insofar as Section 506(i) IPC is concerned, except the ipse dixit of P.W.4, who is independent witness, no evidence was available to show that the respondent/accused had made criminal intimidation. Furthermore, as per the evidence of P.W.3 and P.W.4, they agreed that on the basis of the request made by the appellant, they came to the Court for giving evidence. The trial Court rightly disbelieved the evidence of P.W.3 and P.W.4 and held that there is no evidence to show that the accused had made criminal intimidation. Further, the trial Court rightly disbelieved the evidence of P.W.4 by holding that he is only passers by and hence, there is no evidence to show that the respondent/accused made criminal intimidation. So the ingredients of Section 506(i) IPC has not been made out and the prosecution has failed to prove that the respondent/accused is guilty for an offence under Section 506(i) IPC beyond all reasonable doubt. The trial Court rightly acquitted the accused for an offence under Section 506(i) IPC. So I am of the view, the judgment of acquittal passed by the trial Court does not suffer any illegality or infirmity and hence, it is hereby confirmed. Therefore, I do not find any merits in this appeal and hence, the criminal appeal is dismissed as devoid of merits.



14. In the result, the Criminal Appeal is dismissed by confirming the judgment of acquittal dated 26.07.2006 in C.C.No.344 of 2004 on the file of the Judicial Magistrate's Court No.I, Poonamallee.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

Kj

To

1.The Judicial Magistrate's Court No.I,
Poonamallee.

2. do thro the Chief Judicial Magistrate
Kancheepuram

3.The Public Prosecutor, High Court, Chennai.

4. The Record Keeper, Criminal Section,
High Court, Chennai.

1 cc to Mr.N. Sankaravadivel, Advocate, Sr. 4515

1 cc to Mr.A.M. Rahamath Ali, Advocate, Sr. 4488

Crl.A.No.31 of 2007

RJ (CO)

kk 16/2