

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-09-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 154 of 2010

P.M.N.Kumanan

.. Petitioner

Versus

1.D.Pandian

2.The Sub-Inspector of Police

R.6, Kumaran Nagar Police Station

Chennai-600 083

(Crime No.95 of 2004)

.. Respondents

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the judgment of acquittal passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai-600 015, in C.C.No.2332 of 2004, dated 21.10.2009.

For Petitioner : No Appearance

For Respondents : Mr.A.Prabhakaran
for first respondent
Mr.V.Arul
Government Advocate
(Criminal Side)
for second respondent

ORDER

The case of the prosecution is that on 09.02.2004, at about 8.00 a.m., at Jaberhanpet, in a wordy quarrel, the first respondent is alleged to have assaulted the petitioner with hands and also kicked him down and thrown a cycle on the petitioner, thereby, inflicted injury on him. The first respondent was tried for the offences under Sections 341 and 323 IPC by the Trial Court. After conclusion of trial, the Trial Court, on an analysis of the oral and documentary evidence, concluded that the first respondent is not guilty of the offence complained of and acquitted him of all the charges levelled him. Hence, the present Criminal Revision Case is filed by the defacto complainant.

2. Today, when the matter is taken up, there is no representation for the petitioner. The Hon'ble Apex Court in the judgment reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, has culled out certain principles and in paragraph No.19 has held as follows:-

"19. From the aforesaid decision in Bani Singh vs. State of Uttar Pradesh, reported in (1996) 4 SCC 720, the principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

In the light of the principles culled out in the judgment of the Hon'ble Apex Court cited supra, it is crystal clear that no doubt, the Court can decide the matter even in the absence of the petitioner or his counsel, but, only criteria is that the case should be decided on merits in the absence of the petitioner and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining the case on merits. In the light of the decision cited supra, as the case is pending from 2010 and the petitioner is successful in dragging on the case, the main Criminal Revision Case itself is taken up and disposed of on merits, after hearing the learned counsel appearing for the first respondent and the learned Government Advocate appearing for the second respondent and also after perusing the materials available on record.

3. The only ground raised by the learned counsel appearing for the petitioner in the grounds of revision is that the evidence given by the Government Doctor that the injury inflicted upon the petitioner is a grievous one and the evidence of the Investigation Officer that he is aware that the petitioner has taken treatment in the Government Royapettah Hospital, were not taken note of by the Trial Court and the Trial Court has not given proper reasons to reject the evidence of P.Ws. 3 and 4.

4. Mr.A.Prabhakaran, learned counsel appearing for the first respondent vehemently argued that the Trial Court has taken into consideration of the entire evidence in detail, especially, taking into consideration that the Identification Parade has not been conducted so as to identify the accused and when the identification

of the accused was not done, there is an error apparent on the face of the record, apart from that, the evidence of P.Ws. 3 and 4 do not correlate the offence as against the accused, rightly acquitted the accused.

5. On a careful perusal of the entire evidence available on record and the deposition of P.Ws. 3 and 4, one thing is clear that the Trial Court has rightly pointed out that in respect of the offence complained of, the identification parade has not been conducted by the police so as to identify the accused and the evidence of P.Ws. 3 and 4 do not correlate the offence as against the accused. Even as per the evidence of P.W.3/Angalatchi, she only says that on hearing the noise, she came out and she witnessed the wordy quarrel between complainant and others. This version of P.W.3 would manifestly make it clear that she has not seen the occurrence directly but on hearing the noise only, she came out and witnessed the wordy quarrel. Thus, it is crystal clear that as per the evidence available on record, it was only a wordy quarrel and hence, no offence as alleged against the first respondent has been made out. Therefore, the Trial Court has rightly come to the conclusion that the offence as alleged against the first respondent has not been made out and rightly acquitted the accused. I find no reason to interfere with the reasoned judgment of acquittal passed by the Trial Court on 21.10.2009 and it stands confirmed. This Criminal Revision Case is dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To,

1.The XXIII Metropolitan Magistrate,
Saidapet, Chennai-15

2.The Chief Metropolitan Magistrate,
Egmore, Chennai-1

3.The Sub-Inspector of Police
R6 Kumaran Nagar, Police Station,
Chennai-600 083
crime No.95 of 2004

4.The Public Prosecutor HighCourt, Madras
+1 cc to Mr.A.Prabhakaran Advocate sr.51790

CrI.R.C. No. 154 of 2010

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