

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.177 of 2010

M.Thangavelu

.. Petitioner

Versus

1.Sub-Inspector of Police
North Police Station,
Erode.
Crime No.6 of 2006

2.Thirumalar

.. Respondents

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. to set aside the order of acquittal dated 18.06.2008 in C.C.No.115 of 2007 on the file of Chief Judicial Magistrate, Erode.

For Petitioner : Mr.V.Balamurugan
For Respondent-1 : Mr.V.Arul
Government Advocate (Crl.side)
For Respondent-2 : M/s. I.C. Vasudevan

ORDER

The petitioner is the complainant in C.C.No.115 of 2007 on the file of Chief Judicial Magistrate, Erode .

2. The case of the petitioner is that the accused/second respondent herein had dumped the waste materials in the street. When the same was questioned by the complainant, the accused abused him with filthy language and attempted to attack him with knife. When the petitioner resisted such attack by holding her hand, the accused bite the petitioner with her teeth and caused him injuries. Hence a complaint had been lodged by the petitioner herein before the first respondent police and a case has been registered in Crime No.6 of 2006. The case has been taken cognizance by the learned Chief Judicial Magistrate, Erode in C.C.No.115 of 2007. After trial, the trial court found that the offences alleged against the petitioner under Sections 294(b), 323, 506(ii) of IPC have not been proved by the prosecution beyond reasonable doubt and acquitted the accused/second respondent herein. Aggrieved against the order of acquittal, this Criminal Revision has been filed.

3. Learned counsel for the petitioner would contend that without analysing the evidences on record properly, the court below had erroneously acquitted the accused. The court below

had not taken into consideration the materials placed before it for making a case under Section 323 of IPC as the accused had bitten the defacto complainant with her teeth and caused injury on the hand severely.

4. Learned Government Advocate (Crl.side) would submit that a reading of paragraph 14 of the order of the court below would indicate that the accused had bitten the complainant with her teeth on his hand while she was holding an 'Aruval' on her hand, which was disbelieved by the Court below. As rightly held by the court below that if the accused was holding an 'Aruval', a strong weapon, she would have definitely attempted to use the same and the possibility of biting the petitioner is remote, hence, no prima facie has been made out as against the accused and therefore, the order passed by the trial Court needs no interference by this Court.

5. Heard both sides and perused the records. At this juncture, it is relevant to point out that had the accused was armed with an 'Aruval', she must have made use of the same to attack the defacto complainant and there is no necessity for her to use her teeth despite holding an 'Aruval' on her hand. Even if we take into account the version of the complainant that a case under Section 323 had been made out, the court below had clearly held in paragraph 20 of the order that by using the teeth, also a deadly weapon, even if the accused had bitten the complainant, only a case under Section 324 of IPC could have been made against the accused but the prosecution has charged the accused only for the offence punishable under Section 323 of IPC which is wrong. Further, the possibility of the accused biting the petitioner when she was alleged to have been holding a weapon (Aruval) is remote. The trial Court, upon analysis of the evidence on record, rightly disbelieved the case of the prosecution and acquitted the accused/second respondent herein. I do not find any reason to interfere with the order of acquittal passed by the court below.

6. In the result, this Criminal Revision fails and the same is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

smi/rsh

To

1. The Chief Judicial Magistrate, Erode.
2. The Sub-Inspector of Police
North Police Station, Erode.
3. The Public Prosecutor, Madras.

+lcc to Mr.P. Muthukumarasaamy, Advocate, S.R.No.52126
+lcc to Mr.I.C. Vasudevan, Advocate, S.R.No.51989

CA(CO)
EU(09/12/2015)

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