

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.433 of 2010

1. Velayudham
 2. Seenu @ Srinivasan
 3. Theerthamalai
 4. Ganesh
- ... Petitioners/Accused

vs

The Inspector of Police
(Law and Order)
R-5, Virugambakkam Police Station
Virugambakkam, Chennai. ... Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. as against the order dated 03.09.2009 passed by the learned Additional District and Sessions Judge, Fast Track Court No.V, Chennai in C.A.No.49 of 2009 in partly allowing the order dated 06.05.2008 passed by the learned IX Metropolitan Magistrate, Saidapet, Chennai in C.C.No.5482 of 2005.

For Petitioner : No appearance

For Respondent : Mr.V.Arul
Government Advocate
(Criminal side)

ORDER

Though the case has been listed under the caption "old year cases", when the matter is taken up today, there is no representation for the petitioner. On a perusal of the docket sheet, it is seen that after the matter was admitted on 09.06.2010, the matter has been listed for the first time only on 30.09.2015 after a period of five years and on that day by way of giving one more opportunity to the petitioners, this Court directed the matter to be listed today. However, when the matter was taken up for hearing, there was no representation for the petitioner. Hence, the Criminal Revision Case is taken up for disposal on merits as per the judgment of the Hon'ble Supreme Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka].

2. The petitioners herein are arrayed as an accused in C.C.No.5482 of 2005 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai and vide judgment dated 06.05.2008 they have been convicted for the offence under Sections 448, 427 and 506(ii) of IPC and imposed fine of Rs.500/- for each of the offence, in default, to undergo one month simple imprisonment for each of the offence. As against the said conviction and fine imposed, the petitioners preferred the appeal before the learned Additional District and Sessions Judge, Fast Track Court No.V, Chennai and the first appellate Court by judgment dated 03.09.2009 partly allowed the appeal by setting aside the conviction and the fine imposed under Section 427 IPC and confirmed the conviction and fine imposed for the offences under Sections 448 and 506(ii) of IPC. Aggrieved by the same, the present criminal revision case is filed.

3. The case of the prosecution is that on 11.04.2005 at about 00.45 hrs, the accused persons illegally trespassed into the property of the complainant by breaking the lock and intimidated the watchman and his son who were sleeping there and sent them out of the property. Hence, the complaint.

4. The only ground, which has been raised by the petitioners in the grounds of revision is that the prosecution witnesses are not independent witnesses and their statements are contrary to each other. The further contention of the petitioners is that the evidence of P.Ws.1 to 5 are only hearsay evidence and therefore, the order passed by the trial court convicting the petitioners is not correct. They would also contend that both the Courts below have not appreciated the evidence in proper perspective, while convicting the accused. Accordingly, they prayed for setting aside the same.

5. Learned Government Advocate (Crl.side) would submit that the first appellate Court only after analysing the oral and documentary evidence available on record, arrived at the conclusion that no case has been made out by the petitioners for acquitting them from the alleged offence under Sections 448 and 506(ii) of IPC; however, the first appellate Court discharged them from the alleged offence under Section 427 IPC. As far as the fine imposed for the alleged offence under Sections 448 and 506(ii) IPC, it is clearly proved by the prosecution by examining PW3, who is the watchman in the property. Further, it is also proved by him that during the night hours they trespassed into the property by intimidating them. Further, the evidences of P.W.6 and 7 corroborates the evidence of P.W1. Therefore, both the Court belows granted only minimum punishment of imposing fine alone, warranting no interference in this revision.

6. Perused the materials available on record.

7. Both the courts below have concurrently held that the petitioners have threatened the watchman and his son while trespassing into the property and the same has been proved by witnesses and evidence produced on the side of the prosecution. Further the petitioners aggrieved over the dismissal of the suit filed by them and due to their previous enmity had committed the offence. The complainant is the owner of the property and in his evidence he has proved that the accused persons trespassed into the property by breaking open the lock for which no contra evidence has been proved by the accused persons. Further the evidence of P.Ws.4, 6 and 7 corroborates the evidence of P.W.3, the watchman, who was attacked by the accused persons. Hence, the contention raised by the petitioners that the evidence of P.Ws.1 to 5 are only hearsay evidence is not correct. Both the courts only after analysing the entire documents available on records have convicted the accused, warranting no interference in this revision. Further, the courts below have imposed very minimum punishment of imposing fine alone; which was further modified by the first appellate court only with regard to the offence under Sections 448 and 506(ii) of IPC and setting aside the conviction and fine imposed ordered by the trial court under Section 427 of IPC, I do not find any merit in the criminal revision case.

8. Accordingly, this Criminal revision case is dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vj2

To

1. The Additional District and Sessions Judge
Fast Track Court No.V, Chennai

2.-do-Thro The Principal Sessions Judge,
Chennai

3. The IX Metropolitan Magistrate, Saidapet, Chennai

4.-do-Thro The Chief Metropolitan Magistrate,
Egmore, Chennai-8

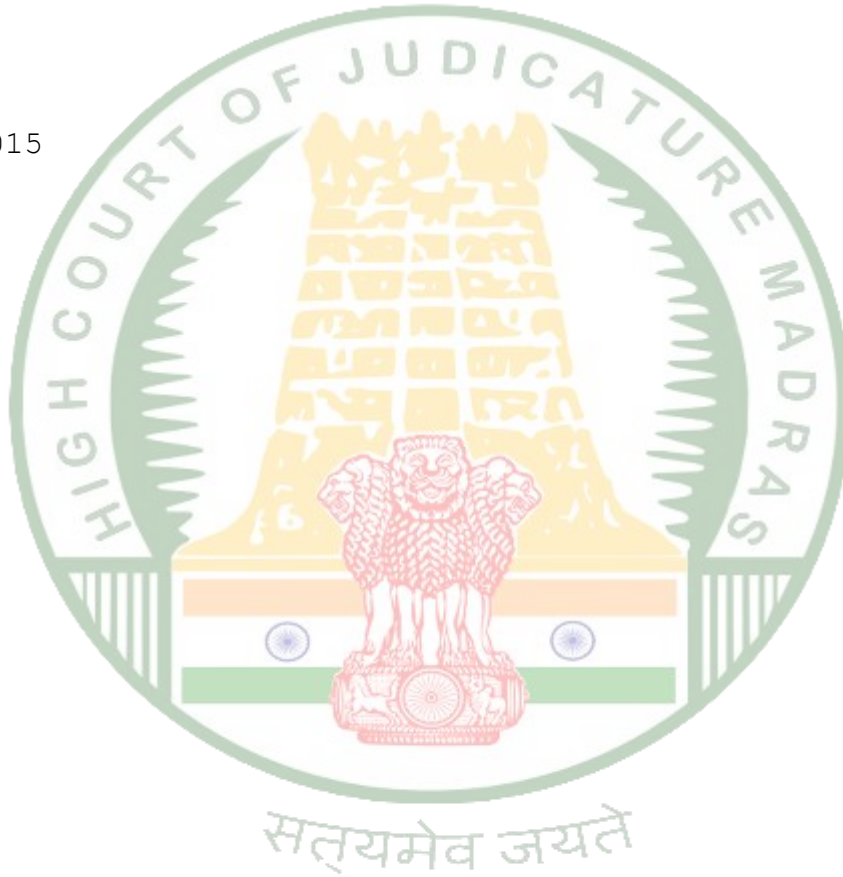
5.The Inspector of Police (Law & Order)
R-5 Virugambakkam Police Station,
Virugambakkam, Chennai

6. The Public Prosecutor, Madras

+1 cc to Mr.Ashok Menon vide sr.55154

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