

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

Criminal Appeal No.754 of 2007

Date of Reserving the Judgment	Date of Pronouncing the Judgment
24.02.2015	27.02.2015

The Commissioner
Tambaram Municipality
Tambaram

... Complainant/Appellant

Vs.

K.S.Devaraj
S/o.Srinivasa Pillai

... Accused/Respondent

Prayer:

Criminal appeal filed under Section 378 Cr.P.C., against the judgment of acquittal dated 26.04.2007 made in S.T.C.No.28 of 2005 on the file of the learned Judicial Magistrate, Tambaram.

For Petitioner : Mr.P.Srinivas

For Respondent : Mr.E.Veda Bhagath Singh

J U D G M E N T

The complainant as an appellant challenging the judgment of acquittal passed by the learned Judicial Magistrate, Tambaram in S.T.C.No.28 of 2005 on 26.04.2007 acquitting the respondent/accused from charges under Section 199 r/w 317 of the Tamil Nadu District Municipalities Act, 1920 has preferred the present appeal.

2. The learned counsel for the appellant/complainant would that the respondent who is the owner of the property bearing Door No.22, Muthurangam Street in Survey No.321 (part) had put up

unauthorised construction to an extent of 390 sq.ft., without obtaining prior permission from the Municipal authorities. Though, the respondent/accused had submitted Ex.P.2/Application seeking permission for construction, the same was rejected vide Ex.P.3/Notice and it was served on respondent, which is evidence by Ex.P.4/Acknowledgment Card. Since the respondent made unauthorised construction, the Commissioner, Tambaram Municipality preferred Ex.P.5/Complaint before the Sub-Inspector of Police, Tambaram Police Station seeking to initiate action against the respondent. The S.I of Police vide Ex.P.6/letter sought for opinion from the learned Government Pleader, District Munsif Court, Tambaram for initiating action against this respondent in pursuant of the complant filed by the Commissioner, Tambaram Municipality. The learned Government Pleader through his Ex.P.7/Reply had opined that police authorities shall not initiate action against the respondent. Hence, the appellant herein filed a chargesheet against the accused under Section 199 r/w 317 of the Tamil Nadu District Municipalities Act, 1920.

3. The Trial Court, after considering the oral and documentary evidence has acquitted the respondent/accused, against which the present appeal has been preferred.

4. Challenging the judgment of acquittal passed under Section 199 r/w 317 of the Tamil Nadu District Municipalities Act, 1920 the learned counsel appearing for the appellant would submit that the respondent herein has made an additional construction to an extent of 390 sq.ft in Survey No.321 (part) at Door No.22, Muthurangam Street, without obtaining proper permission. Hence, the notice was issued to the respondent/accused. Even though the respondent has submitted Ex.P.2/Application seeking permission for construction, the Ex.P.3/Notice dated 24.12.2004 came to be issued and it was served on the respondent which is evidenced from Ex.P.4/Acknowledgment. Thereafter, the appellant/complainant preferred Ex.P.5/Complaint before B6-Tambaram Police Station and pursuant to the same, the Sub-Inspector of Police, B-6, Tambaram Police Station sent Ex.P.6/Letter seeking for opinion from the learned Government Pleader regarding the steps that has to be taken in the matter. The learned Government Pleader, District Munsif Court, Tambaram has given Ex.P.7/Reply dated 30.12.2004 wherein it was stated that the police cannot initiate action against the respondent. Thereafter, the respondent herein filed a suit and obtained an order of injunction. However, the order of injunction was subsequently vacated and the I.A.No.188/2005 was dismissed. The said order passed by the Trial Court is marked as Ex.P.8.

5. P.W.1/Selvam, Municipal Planning Inspector was given power by the Commissioner of Tambaram Municipality to file the case against the respondent herein. The Trial Court has not considered the fact that the respondent has made the construction without obtaining prior permission from the municipality. So, the judgment of acquittal is perverse and hence, the learned counsel for the appellant prayed for setting aside the judgment.

6. Resisting the same, the learned counsel for the respondent would submit that there is no evidence to show that the respondent herein has made additional construction. It is admitted by P.W.1/Selvam in his deposition that the respondent herein is the owner of 19,620 sq.ft of land in which he had made an additional construction to an extent of 390 sq.ft. To prove the same, the completion certificate has not been filed. The Trial Court has rightly considered the fact that there is no evidence to show what is the additional construction and whether it was made contrary to the previous approved plan. Those factum were not proved by the appellant/complainant and so, the Trial Court acquitted the respondent. Hence, the learned counsel for the respondent prayed for dismissal of the appeal.

7. Considered the rival submissions made by both sides and perused the typed set of papers.

8. The complaint has been filed only on the basis of the authorisation given by the Commissioner of Tambaram Municipality. Ex.P.2 is the alleged application submitted by the respondent herein seeking permission for additional construction. In the said application, no plan has been mentioned and the document itself appears fishy. A bare perusal of Ex.P.2/application would show that it is an application under Section 49 of the Tamil Nadu Town and Country Planning Act, 1971 for obtaining permission for development of land and buildings. In the said application, only the name and address of the respondent and the survey number in which the property is located alone has been mentioned. The above details were filled up using ball point pen, however the signature of the respondent appears to be in a different ink. No particulars as to whether the application has been made seeking permission for additional construction or new construction or for demolition and re-construction has been mentioned. As per Ex.P.3/Notice dated 24.12.2004, the Ex.P.2/application was returned. Though in Ex.P.3/Notice, 8 reasons has been assigned, it was not specifically stated on what ground the application was returned. But, P.W.2/Santhanam was examined to prove that Ex.P.3/Notice was served on the respondent. The Ex.P.4/Acknowledgment card would show that

the notice was not received by the respondent herein viz., Devaraj, but by some other person, which is evidenced by comparing the signature of the respondent in Ex.P.2/Application and in Ex.P.4/Acknowledgment card.

9. In the Ex.P.5/Complaint preferred against the respondent by the Commissioner of Tambaram Municipality, it was stated that even though status quo has been ordered by the Trial Court, the construction of a shop was made and it was inaugurated on 18.03.2005.

10. Further, the evidence of P.W.1/Selvam would clearly prove that the respondent herein has made a construction earlier, after obtaining necessary permission and approval. In his cross-examination, he has specifically mentioned that in the year 1988, after obtaining proper permission, the respondent has made a construction. He has also further stated that if the owner wanted to demolish or re-construct or make additional construction, he need to obtain permission. He has also stated that the respondent herein has not made any application for demolition of earlier construction. P.W.1 had denied the suggestion that even though the respondent herein has already filed the completion certificate in pursuance of the construction made by him in the year 1988, the same was wantonly not filed before the Court by the appellant. He also denied the suggestion that the respondent has not made any additional construction. He has also fairly conceded that he has not filed any document to show what is the actual plinth area of the construction. Further, no documents has been filed to show as to how much area of construction, permission was granted in the year 1988 and what is the constructed plinth area available in the said property at present.

11. The Trial Court has given cogent reasons for passing the judgment of acquittal on the basis that the evidence of P.W.1/Selvam itself has disproved that the respondent herein has committed the offence under Section 199 r/w 317 of the Tamil Nadu District Municipalities Act, 1920. Thus, the judgment of acquittal is a well-reasoned one and the same does not suffer any perversity. Hence, the order of the Trial Court does not warrant interference by this Court.

12. In fine,

(a) The Criminal Appeal is dismissed.

(b) The judgment of acquittal dated 26.04.2007 made in S.T.C.No.28 of 2005 on the file of the learned Judicial Magistrate, Tambaram is hereby confirmed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

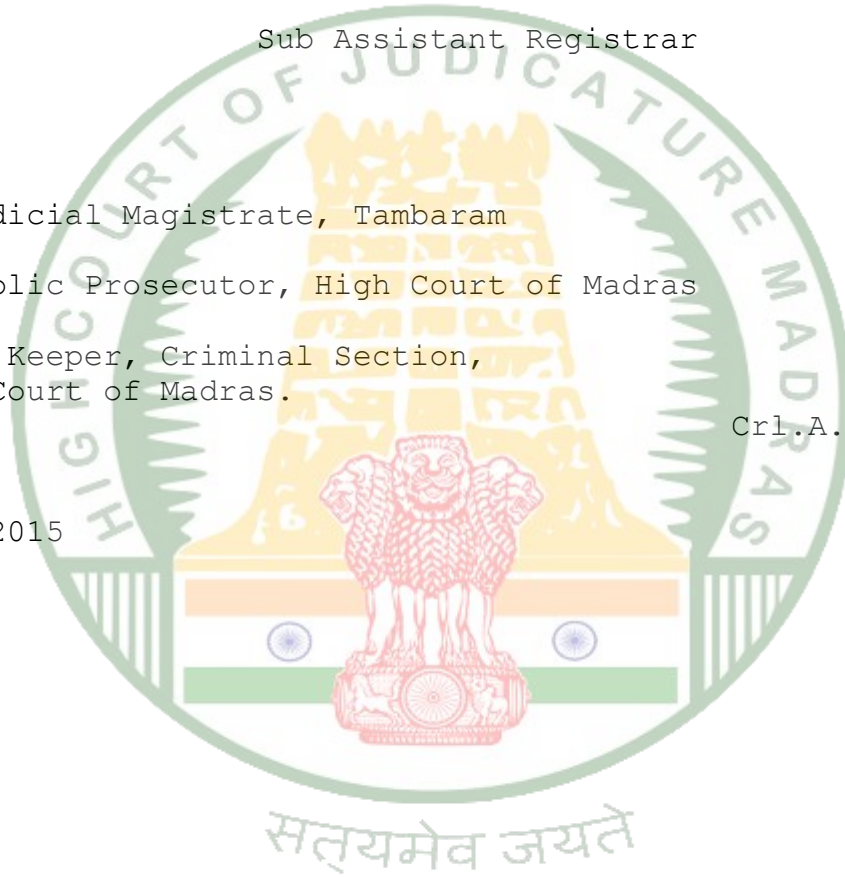
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To

1. The Judicial Magistrate, Tambaram
2. The Public Prosecutor, High Court of Madras
3. Record Keeper, Criminal Section,
High Court of Madras.

Crl.A.No.754 of 2007

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