

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-06-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 886 of 2009

Ravichandran .. Petitioner /Defacto Complainant

Versus

1.Selvaraj
2.Rajendran

3.State rep. by S.H.O.
Sub-Inspector of Police
Neyveli Town Police Station
Neyveli

Cr.No.198 of 2003. .. Respondents /Accused 1 & 2 Complainant

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the order dated 09.04.2009 made in S.T.C.No.475 of 2004 on the file of the District Munsif-cum-Judicial Magistrate, Neyveli-3.

For Petitioner : Ms.D.Helen
for Mr.T.Sivagnanasambandan
M.S.No.3418/2014

For Respondents : Mr.V.Arul
Government Advocate (Crl.Side)
for third respondent.

ORDER

This Criminal Revision Case is filed by the petitioner/complainant aggrieved against the order of acquittal of respondents 1 and 2/accused Nos.1 and 2 passed in S.T.C.No.475 of 2004 on the file of the District Munsif-cum-Judicial Magistrate, Neyveli, dated 09.04.2009.

2. The case of the prosecution is that on 07.05.2003, due to previous enmity, the accused are alleged to have caught hold of the complainant and pushed him inside the bridegroom's room and the first accused is alleged to have attacked him in his head with a wooden log and the second accused is alleged to have beat the complainant with hands and the accused are alleged to have abused him in filthy language. On the basis of the complaint lodged by the complainant, a case was registered against accused No.1 for the offences under Sections 341, 294 and 323 IPC and accused No.2 for the offence under Section 341 IPC. The complaint was taken on file in S.T.C.No.475 of 2004. After trial, the Trial Court acquitted the accused Nos.1 and 2. Aggrieved against the same, the complainant has filed this Criminal Revision Case.

3. On 11.06.2015, when the matter is taken up, there is no representation for the petitioner and the matter is directed to be posted on 23.06.2015 under the caption, "for dismissal". Even today, when the matter is taken up, learned counsel appearing for the petitioner is not present and on his behalf, Ms.D.Helen, learned counsel represented the matter and sought for an adjournment, though, the case is listed today under the caption "for dismissal", this kind of practice is deprecated by the Hon'ble Apex in the judgment reported in (2013) 3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, and has held that the Court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so. The Hon'ble Apex Court in the said decision 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 may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so and further, the Court can decide the matter even in the absence of 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 2009 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 third respondent and also after perusing the materials available on record.

4. Mr.V.Arul, learned Government Advocate (Criminal Side) appearing for the third respondent would submit that the Trial Court has factually considered the matter and as the evidence of P.Ws.1 and 2 are not clear and cogent, rightly acquitted the accused Nos. 1 and 2. He would further add that the grounds raised in the revision is not fair, reasonable and correct.

5. On a perusal of the grounds raised in the revision, it is seen that the main ground raised by the petitioner is that the Court below has failed to take into consideration the Ex.P.1-complaint, Ex.P.2-Observation Mahazar and Ex.P.3-Wound Certificate, in a proper perspective. The petitioner has further raised a ground stating that the Court below has failed to consider that the case of the prosecution has been correctly corroborated by P.Ws. 2 and 3. But, on a careful perusal of the entire evidence as available on record and also the judgment of Trial Court, it is seen that the Trial Court has pointed out the discrepancy between the complaint-Ex.P.1 as well as the evidence of P.Ws. 1 and 2. In the evidence, the complainant, who was examined as P.W.1 has stated as follows:-

“...எதிரி ராஜேந்திரன் தன்னை சட்டை பிடித்து இழுத்து மணவறையில் உள்ள மணமகன் அறைக்கு இழுத்து சென்று”

In his evidence, P.W.1 and also P.W.2, who is a close friend of P.W.1, have stated that the accused Rajendran pulled the shirt of the complainant and dragged him to the bridegroom's room, whereas, in the complaint-Ex.P.1, it is alleged by the complainant that both accused have caught hold of him and pushed him inside the bridegroom's room, which is totally contradictory to each other. Further, in the complaint, the allegation against the second accused/Rajendran is that he has abused the complainant in filthy language and beat him with hands. The discrepancy between the evidence of P.W.1/complainant and Ex.P.1-complaint has been rightly pointed out by the Court below. Further, P.W.1/complainant, during cross-examination, has stated as follows:-

“...சம்பவம் மணமகன் மணமகள் திருமண மேடையில் நடந்தது”

P.W.1/complainant during cross-examination has stated that the occurrence spot was at the stage of the Marriage Hall, whereas, in the complaint, he states that the occurrence took place inside the bridegroom's room. P.W.2 is a close friend of P.W.1 and in his evidence, he would state that at the time of occurrence, there were nearly 300 people present in the marriage hall, but, it is not explained to the Court as to why excepting P.W.2, who is a close friend of P.W.1, none of the independent third party witness has been examined by P.W.1/complainant, when especially more than 300 people were present in the marriage hall and therefore, in my considered opinion, the Court below has rightly come to the conclusion that the complaint-Ex.P.1 is totally contradictory and different from the evidence of P.Ws. 1 and 2 and rightly acquitted the accused. Hence, I do not find any reason to interfere with the order passed by the

Trial Court and the order passed by the Trial Court, dated 09.04.2009, stands confirmed. This Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

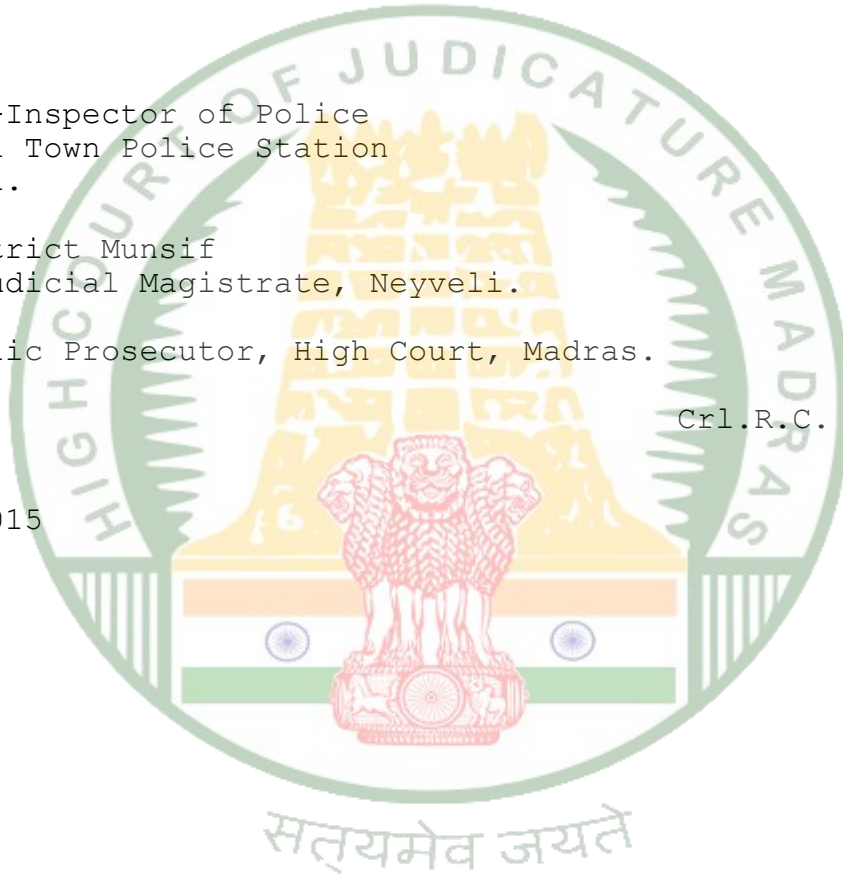
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To

- 1.The Sub-Inspector of Police
Neyveli Town Police Station
Neyveli.
- 2.The District Munsif
-cum-Judicial Magistrate, Neyveli.
- 3.The Public Prosecutor, High Court, Madras.

Crl.R.C. No. 886 of 2009

tej(co)
pmk.3.7.2015



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