

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2016

(Judgment reserved on 29.07.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Cr1.A.No.448 of 2001

Major K.Mathews

... Appellant/Complainant

Vs.

1. K.R.Vittal Raman,
Inspector of Police,
K.2, Ayanavaram Police Station,
Chennai-600 023.

2. Sridhar Babu,
Sub-Inspector of Police,
K.2, Ayanavaram Police Station,
Chennai-600 023.

... Respondents/Accused

Criminal Appeal filed under Section 378(4) Cr.P.C., against the judgment dated 16.03.2001 in C.C.No.8338 of 1992 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai-8.

For appellant : Mr.Major K.Mathews, Party-in-person

For respondents : Mr.V.Krishnamoorthy

JUDGMENT

This Criminal Appeal is filed against the judgment of acquittal, dated 16.03.2001 passed in C.C.No.8338 of 1992 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai, whereby, in respect of the private complaint filed by the appellant herein in the said C.C.No.8338 of 1992 as against the respondents herein, the respondents were acquitted of the charges.

2. The case of the appellant/complainant is as follows:

(a) On 02.09.1992 at about 11.30 hours, he was informed over his residential telephone by his nephew (elder brother's

youngest son-K.O.George, who was a permanent Central Government employee at Carriage Works, Southern Railway, Perambur and residing at No.1, United India Nagar, 3rd Main Street, Ayanavaram), that he was assaulted jointly by three persons, of which, two of them are co-tenants and a son of the landlord. The problem arose between the appellant's nephew and the co-tenants, as the landlord made illegal attempt to forcibly evict the appellant's nephew from the house due to his refusal to pay unreasonable increase in rent. Even earlier on 26.02.1992, in respect of the increase in monthly rent, the appellant's nephew lodged a complaint before the Ayyanavaram Police Station, but the situation calmed down at that time with increase of monthly rent by Rs.50/-.

(b) On 02.09.1992, since the telephone of the said Police Station was out of order and on receipt of continuous calls from the appellant's nephew, the appellant/complainant contacted the Control Room over telephone No.8254519. At about 21.45 hours on 02.09.1992, the complainant received a message from the wife of the nephew that when they both went to the said Police Station in the evening to enquire about the fate of their joint complaint lodged in the forenoon, her husband George was arrested at the instance of the landlord by the Inspector of Police (first respondent herein) (A1) and he was put in the lock-up.

(c) Hence, the appellant/complainant went to the said Police Station from his medical store, driving his car and accompanied by his son, a second year B.Com. student and a male servant and reached the Police Station at about 22.30 hours and saw his nephew coming out of the Police Station just then released on bail on the surety of his friend. The said George narrated about the sufferings he underwent at the hands of the Inspector of Police. Hence, the complainant went inside the Police Station at about 22.45 hours on 02.09.1992 and others were waiting outside. The complainant met Mr.Sridhar Babu, Sub-Inspector of Police (second respondent herein) (A2) and enquired him as to why the appellant's nephew was arrested and kept in lock-up for many hours. But the appellant/complaint was advised by the second respondent herein to meet the first respondent herein.

(d) Thereafter, the appellant went to the seat of A1. After due self-introduction, the appellant requested A1 to clarify the case against his nephew warranting his arrest and detention in the lock-up, etc. A1 informed the appellant/complainant that his nephew was arrested under Section 75 of the City Police Act and thereafter he has been released on bail on the surety of another. Then the complainant expressed his regret over the action of the Inspector of Police, who detained his nephew George in the lock-up for many hours along with the criminals. But the first respondent/A1 got enraged and charged at the

complainant, caught hold of his neck by the shirt and abused him in filthy language and he virtually dragged the complainant from his office towards the lock-up. The complainant explained about his health condition and his official position.

(e) Then A1 and A2 discussed with each other and A2 told the complainant to give in writing a letter of apology according to their dictation. A1 and A2 attempted to dishonestly extort him after intentionally putting the complainant in the fear of injury. When the complainant refused to do so, he was forcibly stripped clean except his underwear and pushed into the lock-up by A1 and A2. The complainant requested to allow him to wear his pants and socks as per the medical advise, to protect his legs and toes which were afflicted with diabetes. The said request was rejected. The complainant was not even allowed to meet his son or advocate. The complainant was threatened and tortured physically and mentally inside the lock-up and he was denied food, water and medicine and he was under suffocation of smoke and was with six other prisoners. Thereafter, he was released on bail by the order of the Court. Subsequently, the complainant preferred the above said private complaint to punish A1 and A2 for the offences committed by them under Sections 166, 219, 220, 342, 357, 384 and 500 IPC read with Section 34 IPC.

3. Though the complaint was filed for the above said offences, the charges were framed against the respondents/accused under Sections 166, 220, 342, 357 and 500 read with 34 IPC, as made out from the evidence put-forth by the witnesses examined on the side of the complainant and the documents filed. On the side of the complainant, P.Ws.1 to 7 were examined and Exs.P-1 to P-21 were marked. When the respondents/accused were questioned under Section 313 Cr.P.C., they denied their complicity in the crime and on their side, D.Ws.1 and 2 were examined and Ex.D-1 was marked.

4. The trial Court, after analysing the oral and documentary evidence available on record, acquitted the respondents/A1 and A2 of the charges. Challenging the same, the complainant has preferred this appeal.

5. The appellant/complainant has appeared as party-in-person and argued before this Court and reiterated the contents of the private complaint filed by him. He argued that on 02.09.1992, he was informed by P.W.3, the wife of his nephew, that she along with her husband lodged a complaint in Ayanavaram Police Station against the son of the landlord of the nephew and others. On hearing the same, the appellant/complainant went to the Police Station and met A2, who asked him to meet A1. A1 abused the appellant in filthy language and pushed the complainant into the lock-up and he was kept with the other inmates in the lock-up. The appellant/complainant further argued that the first

respondent/A1 detained him in the Police Station on the night of 02.09.1992 in illegal custody without informing the grounds under which he was arrested and was kept in lock-up. The appellant/complainant further argued before this Court that he preferred private complaint before the Metropolitan Magistrate's Court in C.C.No.8338 of 1992 for the alleged offences committed by the respondents/A1 and A2 under Sections 166, 219, 220, 342, 357, 384 and 500 IPC read with 34 IPC. He further argued that the respondents herein preferred Crl.O.P.No.10790 of 1993 before this Court under Section 482 Cr.P.C. to quash the proceedings in C.C.No.8338 of 1992 and by order dated 03.05.1994, this Court came to the conclusion in the said Crl.O.P. that Sections 219 and 384 IPC alone were liable to be quashed and accordingly, the same were quashed; regarding the other offences alleged in the complaint, the trial Court was directed to proceed with the case.

6. The appellant/complainant further argued that the evidence of P.Ws.1 to 4 corroborates with each other, against the respondents/accused. He further submitted that in the Police Station, he was asked to remove the dress and the seizure of his dress and other articles were shown in the columns in Ex.P-19. Hence, the appellant/complainant argued that all the above aspects have not been considered by the trial Court and the respondents were acquitted by the trial Court on erroneous findings. Therefore, he prayed for setting aside the impugned judgment of the trial Court.

7. Per contra, learned counsel for the respondents/A1 and A2 submitted that the appellant/complainant was arrested for the offence under Section 75 of the City Police Act, and therefore, it is incorrect to state that he was detained illegally. He further contended that the appellant/complainant abused the first respondent/A1 and banged the table in the Police Station and disturbed peace, inspite of informing the appellant that his nephew was arrested and released on bail. Therefore, the question of using criminal force and wrongful confinement does not arise. Learned counsel for the respondents further submitted that P.Ws.1 to 4 are close relatives and except their evidence, no other independent witness has been examined to corroborate the evidence of P.Ws.1 to 4. P.W.3 admitted in her cross-examination that she did not see the incident, as herself, P.W.4 and P.W.2 were staying outside the Police Station. Learned counsel for the respondents further submitted that though it is the allegation of the appellant/complainant that his dress was removed in the Police Station, but when he was produced before the XIII Metropolitan Magistrate, Egmore, Chennai, he did not complain about the same. Learned counsel further submitted that since the appellant/complainant refused to sign in Ex.P-19, he

cannot not rely upon the same. In support of this submission, learned counsel made detailed arguments by relying upon Section 115 of the Indian Evidence Act.

8. Keeping in mind the above submissions made on both sides, I have given my anxious consideration to the same and also perused the materials available on record.

9. It is the main submission of the appellant/complainant who appeared as party-in-person before this Court, that the evidence on the side of the prosecution has not been properly appreciated by the trial Court. But, I find that except the evidence of P.Ws.1 to 4, who are close relatives, no other independent witness has been examined to corroborate the evidence of P.Ws.1 to 4. P.Ws.5 to 7 in their evidence have not spoken about the alleged occurrence that took place in the Police Station and hence, their evidence will not be useful to prove the case of the prosecution.

10. Though the appellant/complainant has stated in the complaint that inspite of disclosure of his former official position as Major, he was ill-treated in the Police Station and his dress was removed, but when he was arrested under Section 75 of the City Police Act and produced on 03.09.1992 before the XIII Metropolitan Magistrate, Egmore, Chennai, he did not complain anything about the removal of dress and this is evident from Ex.P-18, which is the order of the said Magistrate, dated 03.09.1992 and the relevant portion of the order reads as follows:

"Today the accused was produced before this Court. The aforesaid person told that on hearing that the K2 Police Station Police has arrested one of his relative and had detained him in the police station, he went to the K2 Police Station at 10.45 p.m., the previous night, he asked the police as to why his relative should not be let on bail, he added that he was detained in the K2 Police Station lock-up as per the order of the Inspector of Police and that the police have foisted a false case against him. He told that he is a diabetic patient and that inspite of revealing that to the Inspector of Police, he did not leave him. He further stated that, he could not even take the medicines which he consumes every now and then; that the police did not even offer pure water which is to be given to a patient, that they gave the unclean water in the police station to him. The Police called him a bastard and cheat and scolded him derogatorily. He became sad and insulted because of

that. And the police did not even mention as to what case has been filed against him.

A case has been filed against the petitioner u/s.75 of the MCP Act and has been produced before me. It has been ordered to detain the accused under custody till 17.9.92."

11. While the appellant/complainant was examined as P.W.1, in his chief examination, he has improved his version and stated that he was kept nude. Therefore, the evidence of P.W.1/complainant cannot be relied upon and he has also not chosen to state the above fact before the Metropolitan Magistrate when he was produced. The appellant/complainant further relied upon the judgment of the Metropolitan Magistrate to show that he was not found guilty under Section 75 of the City Police Act. But the said judgment will not in any way help the appellant/complainant to prove the allegations made in the present complaint, which is factually different.

12. Further, the appellant/complainant relies upon Ex.P-19 to show that the Police removed his dress, but as rightly contended by the learned counsel for the respondents, the appellant/complaint has refused to sign in Ex.P-19. Therefore, it is clear that the appellant/complainant did not accept the document Ex.P-19 and since he disowned Ex.P-19, now he is estopped from relying upon the said document in support of his contention that his dresses were removed by A1 and A2 on 02.09.1992 and that he was kept in the lock-up.

13. Moreover, in the decision of the Supreme Court reported in 2003 (12) SCC 606 (Ramanand Yadav Vs. Prabhu Nath Jha), the Apex Court has dealt with various decisions on the subject and held that though there is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based, generally, the order of acquittal shall not be interfered with, because the presumption of innocence of the accused is further strengthened by acquittal and further that the judgment of acquittal can be interfered with only when there are compelling and substantial reasons for doing so. The Apex Court further held that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted and the paramount consideration of the Court is to ensure that miscarriage of justice is prevented.

14. Further, I am of the opinion that almost 24 years have lapsed from the date of occurrence, i.e. 02.09.1992. Therefore, at this distant point of time, I do not find any valid reason to interfere with the impugned judgment of acquittal passed by the trial Court. Moreover, the evidence available on record does not disclose that the offences alleged against the respondents/A1 and A2 are made out.

15. For all the above reasons, the Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Copy to

1. The Additional Chief Metropolitan Magistrate,
Egmore, Chennai-600 008.
[Now functioning at Allikulam Commercial Complex,
Park Town, Chennai-2.
2. The Public Prosecutor,
High Court, Madras.
3. The Record Keeper,
Criminal Section,
High Court, Madras.

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