

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Revision No.5 of 2014

Govindaraj

.. Petitioner

Vs

1. The State Inspector of Police,
rep. by the Inspector of Police,
Virinchipuram Police Station,
Vellore District.
(Cr.No.463 of 2004)

2. Saradha

3. Angamuthu

4. Sakthivel

5. Nagalingam

6. Selvaraj

7. Rajendiran

8. Tanappan

.. Respondents

Prayer :-

This Criminal revision is filed under Section 397 and 401 of Cr.P.C., to set aside the order of the learned Additional Assistant Sessions Judge District Judge(Trainee), Vellore, dated 06.04.2006 made in S.C.No.432 of 2005.

For petitioner : Mr.P.Krishnan

For respondent : Mr.R.Ravichandran,
Government Advocate(Crl.

Side)

for R1

O R D E R

Challenging the order of acquittal passed by the learned Additional Assistant Sessions Judge/District Judge (Trainee), Vellore, in S.C.No.432 of 2005 dated 06.04.2006, the present revision has been filed.

2. The case of the prosecution in brief is as follows:

On 27.11.2004, at about 10.30 a.m., all the accused with the help of JCP machine damaged the compound wall, bathroom, latrine of the petitioner's property worth about 75,000/-. Subsequently, petitioner has given a complaint. Based on the said complaint, a crime was registered on 30.11.2004 in Crime No.467/2004, by P.W.8, Sub-Inspector of Police. After registering the complaint, P.W.8 commenced investigation and proceeded to the scene of occurrence and prepared Observation Mahazar(Ex.P.6) and Rough Sketch(Ex.P.7) in the presence of witnesses and also recorded the statements of witnesses and after completion of investigation, he laid charge sheet against the accused.

3. Considering the above material, the trial court framed charges for the offences under Sections 147 IPC and Section 3(1) of PPDL Act and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 9 witnesses were examined and 7 documents were exhibited.

4. Out of the witnesses examined, P.W.1 is the defacto complainant, and he is the owner of the property. According to him, on 27.11.2004, all the accused with the aid of JCP Excavator damaged the compound wall, bathroom and latrine, belonging to the petitioner and caused damage to the tune of Rs.80,000/-. P.W.2 is the brother of P.W.1. He has also spoken about the damage caused by the respondent/accused. P.Ws.3 and 4 have also spoken about the occurrence. P.Ws.5 and 6 are witnesses to the observation mahazar. P.W.7 is a photographer, who took photograph of the place of occurrence. P.W.8 is the Sub-Inspector of Police, who registered the complaint and conducted investigation and recorded the statements of the witnesses and after completion of investigation, he laid charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness or mark any documents.

6. Having considered all the above materials, the trial court acquitted the accused and challenging the same, the present revision has been filed.

7. Even though notice was served on the respondents 2 to 8 and their names were printed in the cause list none appeared on behalf of the respondents 2 to 8.

8. The learned counsel appearing for the petitioner would submit that there are four eye-witnesses to the occurrence and the court below, without considering the evidence on proper perspective, has mechanically acquitted the accused, from the evidence of P.Ws.1 and 2, the prosecution has clearly established that only these accused, who have formed unlawful assembly and came with JCP machine and damaged the compound wall, bathroom and latrine, belonging to the petitioner and caused damaged to the tune of Rs.75,000/-, but the trial court without considering all the above aspects, on an erroneous consideration of evidence acquitted the accused.

9. I have considered the submission of the learned counsel for the petitioner and perused the materials available on record, carefully.

10. Even though the occurrence took place on 27.11.2004, First Information Report was registered only on 30.11.2004 and the First Information Report reached the court only on 02.12.2004 and there is no explanation for the said delay. Apart from that even though it is alleged that the accused had damaged the property of the petitioner with the aid of a JCP earthmover, the said JCP machine was not seized by the police and there is no investigation regarding the ownership of the JCP machine.

11. That apart, P.W.1 to P.W.4 are all very closely related and they are interested witnesses. Even though it is admitted by P.W.1 that more than 100 people were present at the time of occurrence, no independent witnesses were examined.

12. The non explanation of delay in filing the First Information Report and non examination of independent witnesses creating a doubt about the prosecution case. Apart from that from the evidence of P.Ws.1 to 4, it is clear that the petitioner has tried to put up construction without obtaining permission from the panchayath and that there is also a dispute between the parties. Considering all the above, the trial court came to a conclusion that the prosecution failed to prove the

case beyond any reasonable doubt and acquitted the accused.

13. It is settled law that in a case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him. Every person shall be presumed to be an innocent, unless his guilt is proved by a competent Court. Secondly, if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible, on the basis of the evidence on record, the appellate Court should not disturb the finding and the acquittal recorded by the trial Court. In the instant case, the trial Court, after considering the entire evidence, has acquitted the accused. In the facts and circumstances, I find no illegality or irregularity or perversity in the order passed by the court below.

14. In the result, the Criminal Revision is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Additional Assistant Sessions Judge,
District Judge (Trainee),
Vellore.
2. The Inspector of Police,
Virinchipuram Police Station,
Vellore District.
3. The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.5 of 2014

GMI (CO)
RS(05/05/2017)